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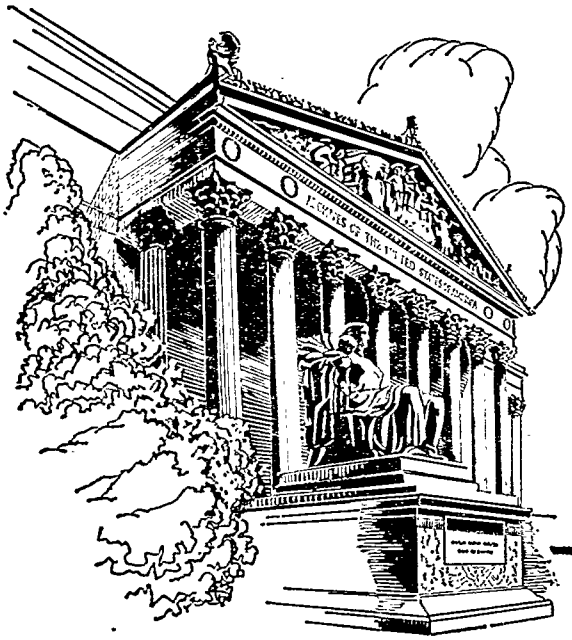

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1965, and specifies how they are affected.

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Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

PART 7—CONTRACT CLAUSES

Subpart F—Clauses for Construction and Architect-Engineer Contracts

Subpart F is revised as follows:

AUTHORITY: The provisions of this Subpart F issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart F—Clauses for Construction and Architect-Engineer Contracts

§ 7.600 Scope of subpart.

This subpart sets forth uniform contract clauses for use in connection with the procurement of construction (see § 18.100 of this chapter) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both. For format and clauses to be used in a contract for dismantling, demolition or removal of improvements, see § 16.404 of this chapter.

§ 7.601 General.

As used throughout this subpart, the term "construction contract" means any contract (other than a short form construction contract (see §§ 16.401–2 and 16.402–2 of this chapter), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in § 18.101–1 of this chapter.

§ 7.602 Required clauses for fixed-price construction contracts.

The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this subpart.

§ 7.602–1 Definitions.

DEFINITIONS (JUNE 1964)

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

§ 7.602–2 Specifications and drawings.

SPECIFICATIONS AND DRAWINGS (JUNE 1964)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

§ 7.602–3 Changes.

CHANGES (JUNE 1964)

The Contracting Officer may, at any time, by written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract if within its general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this contract, no charge for any extra work or material will be allowed.

When Standard Form 23A is used, the words "Disputes clause of this contract" in the foregoing paragraph need not be substituted for "Clause 6 of these General Provisions". In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see § 3.807–4 of this chapter) and shall assure that the contract includes or is modified to include a defective pricing data clause (see § 7.104–29).

§ 7.602–4 Changed conditions.

CHANGED CONDITIONS (JUNE 1964)

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adustment to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

When Standard Form 23–A is used, the words "Disputes clause of this contract" in the foregoing paragraph need not be substituted for "Clause 6 of these General Provisions". In accordance with 10 U.S.C. 2306(f), prior to the pricing of any modification pursuant to the "Changed Conditions" clause that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see § 3.807–4 of this chapter) and shall assure that the contract includes or is modified to include a defective pricing data clause (see § 7.104–29).

§ 7.602–5 Termination for default—damage for delay—time extensions.

Insert the clause set forth in § 8.709 of this chapter.

§ 7.602–6 Disputes.

(a) Except as provided in paragraph (b) of this section, insert the following clause:

DISPUTES (JUNE 1964)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceedings under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

In accordance with Departmental procedures, the foregoing clause may be

modified to provide for intermediate appeal in oversea areas. The decision shall, if mailed, be sent by certified mail, return receipt requested.

(b) In procurements to be performed outside the United States, its possessions and Puerto Rico, where it is anticipated that the contractor will be a foreign firm, one of the clauses provided for in § 7.103–12(b) will be inserted in accordance with the instruction therein.

(c) The form in which the contracting officer shall notify the contractor of his decision under the Disputes clause is set forth in § 1.314 of this chapter.

§ 7.602–7 Payments to contractor.

(a) Except as provided in paragraph (b) of this section, insert the following clause:

PAYMENT TO CONTRACTOR (JUNE 1964)

(a) The Government will pay the contract price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

(b) Where (1) the contract amount exceeds one million dollars, and (2) the time of performance, specified originally, exceeds one year and (3) where the retained percentage provided for in paragraph (c) of the clause above greatly exceeds the amount necessary for the protection of the Government, paragraph (c) of the clause may be modified by adding the following:

Where the time originally specified for completion of this contract exceeds one year, the Contracting Officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may reduce the total amount retained from progress payments to an amount not less than 10 percent of the estimated value of the work remaining to be done under the contract or 1½ percent of the total contract amount, whichever is the higher. In computing the total contract amount, for the purposes of the preceding sentence, the contract amount for any separate building, public work, or other division of the contract on which the price is stated separately in the contract and on which payment has been in full, including retained percentage thereon under this clause shall be excluded.

§ 7.602–8 Assignment of claims.

ASSIGNMENT OF CLAIMS (JUNE 1964)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

The last two sentences of paragraph (a) of the foregoing clause shall be deleted from contracts entered into with foreign contractors.

§ 7.602–9 Material and workmanship.

MATERIAL AND WORKMANSHIP (JUNE 1964)

(a) Unless otherwise specifically provided in this contract, all equipment, material and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

§ 7.602–10 Contractor inspection system.

(a) Except as provided in paragraph (b) of this section, insert the following clause in all contracts in excess of $10,000.

CONTRACTOR INSPECTION SYSTEM (NOV. 1964)

The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspections.

(b) Where it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL–I–45208A (see § 14.104–2(b) of this chapter), the clause set forth in paragraph (a) of this section shall be included in the contract with the following additional sentence:

The inspection system shall be in accordance with Military Specification MIL–I–45208A. (JULY 1964)

§ 7.602–11 Inspection and acceptance.

INSPECTION AND ACCEPTANCE (JUNE 1964)

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship re-

quired by this Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Clause 5 of these General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards the Government's rights under any warranty or guarantee.

Where Standard Form 23A is used, the words "Termination for Default—Damages for Delay—Time Extensions clause of this contract" in the foregoing paragraph need not be substituted for "Clause 5 of these General Provisions."

§ 7.602–12 Superintendence by contractor.

SUPERINTENDENCE BY CONTRACTOR (JUNE 1964)

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

§ 7.602–13 Permits and responsibilities.

PERMITS AND RESPONSIBILITIES (JUNE 1964)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

§ 7.602–14 Conditions affecting the work.

CONDITIONS AFFECTING THE WORK (JUNE 1964)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

§ 7.602–15 Other contracts.

OTHER CONTRACTS (JUNE 1964)

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

§ 7.602–16 Patent indemnity.

PATENT INDEMNITY (JUNE 1964)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

§ 7.602–17 Additional bond security.

Insert the clause set forth in § 7.103–9.

§ 7.602–18 Covenant against contingent fees.

Insert the clause set forth in § 7.103–20.

§ 7.602–19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT (JUNE 1964)

No member of Congress or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 7.602–20 Buy American.

In accordance with § 6.204 of this chapter, insert the clause set forth in § 6.204–5.

§ 7.602–21 Convict labor.

Insert the contract clause set forth in § 12.203 of this chapter.

§ 7.602–22 Equal opportunity.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.602–23 Labor standards provisions.

In accordance with § 12.403 of this chapter, insert the clauses entitled:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.
Apprentices.
Payrolls and Payroll Records.
Compliance with Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.
Employee Compensation—Cape Kennedy, Patrick Air Force Base and Merritt Island Launch Area.

§ 7.602–24 Nondomestic construction materials.

In accordance with the requirements of § 6.204–4 of this chapter, include the clause set forth therein.

§ 7.602–25 Gratuities.

In accordance with the requirements of § 7.104–16, insert the contract clause set forth therein.

§ 7.602–26 Small business.

(a) *Utilization of small business concerns.* In accordance with § 1.707–3(a) of this chapter, insert the clause set forth therein.

(b) *Small business subcontracting program.* In accordance with § 1.707–3 (c) of this chapter, insert the clause included therein.

§ 7.602–27 Federal, State and local taxes.

In accordance with the requirements of § 11.401 of this chapter, insert the contract clause set forth in § 11.401–1 or § 11.401–2 of this chapter as appropriate.

§ 7.602–28 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.602–29 Termination for convenience of the Government.

Insert the clause set forth in § 8.701(a) as modified by § 8.701(c) of this chapter.

§ 7.602–30 Notice and assistance regarding patent and copyright infringement.

In accordance with the requirements of § 9.104 of this chapter, insert the contract clause set forth therein.

§ 7.602–31 Authorization and consent.

In accordance with the requirements of § 9.102–1 of this chapter, include the clause set forth therein.

§ 7.602–32 Composition of Contractor.

COMPOSITION OF CONTRACTOR (JANUARY 1965)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

§ 7.602–33 Site investigation.

SITE INVESTIGATION (JANUARY 1965)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to aquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Government.

§ 7.602–34 Protection of existing vegetation, structures, utilities, and improvements.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS (JANUARY 1965)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

§ 7.602–35 Operations and storage areas.

OPERATIONS AND STORAGE AREAS (JANUARY 1965)

(a) All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by his operations.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbings or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbings, or sidewalks shall be repaired by, or at the expense of the Contractor.

§ 7.602–36 Progress charts and requirements for overtime work.

PROGRESS CHARTS AND REQUIREMENTS FOR OVERTIME WORK (JANUARY 1965)

(a) The Contractor shall within 5 days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Contracting Officer, and shall immediately deliver to the Contracting Officer three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the contract entitled "Termination for Default—Damages for Delay—Time Extensions."

§ 7.602–37 Subcontractors.

SUBCONTRACTORS (JANUARY 1965)

Within 7 days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the clauses of this contract entitled "Equal Opportunity", "Davis-Bacon Act", "Contract Work Hours Standards Act—Overtime Compensation", "Apprentices", "Payrolls and Payroll Records", "Compliance With Copeland Regulations", "Withholding of Funds", "Subcontracts" and "Contract Termination—Debarment". Nothing contained in this contract shall create any contractual relation between the subcontractor and the Government.

§ 7.602–38 [Reserved]

§ 7.602–39 Use and possession prior to completion.

USE AND POSSESSION PRIOR TO COMPLETION (JANUARY 1965)

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the contract. While the Government is in such possession, the Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.

§ 7.602–40 Cleaning up.

CLEANING UP (JANUARY 1965)

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

§ 7.602–41 Additional definitions.

ADDITIONAL DEFINITIONS (JANUARY 1965)

(a) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(b) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provided complete in place", that is "furnished and installed".

§ 7.602–42 Accident prevention.

(a) Normally the following clause concerning safety controls, records, reports and corrective action to be taken shall be inserted.

ACCIDENT PREVENTION (JANUARY 1965)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385–1–1, dated 13 March 1958, entitled "General Safety Requirements", as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this article by subcontractors will be the responsibility of the Contractor.

(b) In contracts involving work of long duration or of hazardous character, the following paragraph (e) will be added to the above clause:

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program.

§ 7.602–43 Government inspectors.

GOVERNMENT INSPECTORS (JANUARY 1965)

The work will be conducted under the general direction of the Contracting Officer and is subject to inspection by his appointed inspectors to insure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the Contracting Officer, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the contract.

§ 7.602–44 Commencement, prosecution and completion of work.

COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (JANUARY 1965)

The Contractor will be required to commence work under this contract within _____ calendar days after the date of receipt by him of notice to proceed, to prosecute said work diligently, and to complete the entire work ready for use not later than _____. The time stated for completion shall include final clean-up of the premises.

§ 7.602–45 Contract drawings, maps and specifications.

CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (JANUARY 1965)

(a) _____ sets (five unless otherwise specified herein) of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the office of

_____

_____

(Address)

Title	File	Drawing No.
_____		

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

§ 7.602–46 Price adjustment for suspension, delays or interruption of work.

The following clause shall be included in fixed-price construction contracts:

PRICE ADJUSTMENT FOR SUSPENSION, DELAYS, OR INTERRUPTION OF WORK (NOVEMBER 1961)

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If, without the fault or negligence of the Contractor, the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of the contract, or by his failure to act within the time specified in the contract (or if no time is specified within a reasonable time), an adjustment shall be made by the Contracting Officer for any increase in the cost of performance of the contract (excluding profit) necessarily caused by the unreasonable period of such suspension, delay, or interruption, and the contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes even if the work had not been so suspended, delayed, or interrupted. No claim under this clause shall be allowed (i) for any costs incurred more than twenty days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply where a suspension order has been issued), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption but not later than the date of final payment under the contract. Any dispute concerning a question of fact arising under this clause shall be subject to the Disputes clause.

§ 7.603 Clauses for fixed-price construction contracts to be used when applicable.

§ 7.603–1 Notice to Government of labor disputes.

Insert the clause set forth in § 7.104–4 in all contracts for items on the DOD Master Urgency List.

§ 7.603–2 Soviet-controlled areas.

In accordance with the requirements of § 6.403 of this chapter, insert the contract clause set forth therein.

§ 7.603–3 Filing of patent applications.

In accordance with the requirements of § 9.106 of this chapter, insert the contract clause set forth in § 9.106 or § 9.106–1, as appropriate.

§ 7.603–4 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the appropriate contract clause set forth therein.

§ 7.603–5 [Reserved]

§ 7.603–6 Military security requirements.

In accordance with the instructions of § 7.104–12, insert the contract clause set forth therein.

§ 7.603–7 Examination of records.

In accordance with the requirements of § 7.104–15, insert the contract clause set forth therein.

§ 7.603–8 Priorities, allocations, and allotments.

In accordance with the requirements of § 1.307–2 of this chapter, insert the contract clause set forth in § 7.104–18.

§ 7.603–9 Subcontracts.

In accordance with § 3.903–1 of this chapter, insert the appropriate subcontracts clause, modified if appropriate.

§ 7.603–10 [Reserved]

§ 7.603–11 Price reduction for defective cost or pricing data.

In accordance with the requirements of § 7.104–29, insert the appropriate clause set forth therein.

§ 7.603–12 Workmen's compensation insurance overseas.

In accordance with § 10.403 of this chapter, insert the clause set forth therein.

§ 7.603–13 Taxes.

In accordance with the requirements of § 11.403–2 of this chapter, in contracts to be performed outside the United States, its possessions and Puerto Rico, insert one of the clauses set forth in paragraphs (a) and (b) thereof, or if no tax agreement has been executed between the United States and the foreign country and tax relief is not available, insert the clause in § 11.404 of this chapter.

§ 7.603–14 Advance payments.

When advance payments are to be made in accordance with Subpart D, Part 163 of this chapter, insert the appropriate clause as set forth in § 163.64–2 of this chapter.

§ 7.603–15 Performance of work by contractor.

In accordance with the requirements of § 18.104 of this chapter, insert the following clause:

PERFORMANCE OF WORK BY CONTRACTOR (JANUARY 1965)

The Contractor shall perform on the site, and with his own organization, work equivalent to at least (words) percent* (figures) of the total amount of work to be performed under the contract. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage; and the Contracting Officer determines that it would be to the Government's advantage, the percentage of the work required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Contracting Officer.

§ 7.603–16 Patent rights.

In accordance with the requirements of § 9.107 of this chapter in contracts involving experimental, developmental or research work, insert the appropriate contract clauses set forth therein.

§ 7.603–17 Interest.

In accordance with the requirements of §§ 163.118 and 163.119 of this chapter, insert the clause set forth in § 163.118.

§ 7.603–18 Competition in subcontracting.

In accordance with the requirements of § 7.104–40, insert the contract clause set forth therein.

*The required percentage shall be the maximum consistent with customary or necessary specialty subcontracting, complexity, and magnitude of the work, and shall not be less than 20 percent, except for housing contracts in which it shall not be less than 15 percent.

§ 7.603–19 Duty free entry.

In accordance with the requirements of § 6.603–2 of this chapter, insert either or both of the clauses set forth in § 6.603–3 of this chapter, as appropriate.

§ 7.603–20 Audit and records.

In accordance with the requirements of § 7.104–41, insert the appropriate clause set forth therein.

§ 7.603–21 Subcontractor cost and pricing data.

In accordance with the requirements of § 7.104–42, insert the applicable clause set forth therein.

§ 7.603–22 Government-furnished property clause for fixed-price contracts.

Insert the clause set forth in § 13.702 of this chapter in contracts for construction under which the Government is to furnish to the contractor material, special tooling, or industrial facilities consistent with § 13.303 of this chapter.

§ 7.603–23 Fixed-price incentive contract clause.

The following clause shall be inserted in all negotiated contracts providing for a fixed price with provision for an adjustment reflecting the efficiency and economy exercised by the contractor during performance of the contract.

INCENTIVE PRICE REVISION (JANUARY 1965)

(a) *General.* The total contract price set forth in this contract as it may have been modified, consists of unit prices, lump sum prices or a combination thereof, and such total contract price is a total target price which includes a total target profit of ------ percent of total target costs. The total target price shall be revised in accordance with the provisions of this clause: *Provided,* That the total amount paid under this contract shall not exceed (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items, plus (iii) ------ percent of the sum of (i) and (ii) above.

(b) *Submission of data.* Within ------ days after completion of all work and services to be performed under this contract, the Contractor shall submit (i) a detailed statement of costs incurred in the performance of this contract; (ii) such other information as the Contracting Officer may require; and (iii) a price list of all materials, supplies and property, the cost of which is included in (i) above, which are on hand upon completion of the work. Where the Contractor fails to submit the required data within the time specified, no further payment may be made by the Contracting Officer until the data are furnished.

(c) *Price revision.* Upon submission of the data required by paragraph (b) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (b) above, the Contractor and the Contracting Officer shall establish by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the work and services performed under this contract and accepted by the Government.

(2) The total adjusted price of the work and services performed under this contract shall be established by adding to the total adjusted cost, as negotiated under (1) above, less the proceeds of any disposition of Contractor inventory in accordance with (g) below, an allowance for profit determined in accordance with (3) below, *Provided, however,* That in no event shall the total adjusted price exceed the amount computed in accordance with paragraph (a) above.

(3) The allowance for profit with respect to this contract shall be determined as follows, subject to the provisions and limitations set forth in subparagraph (2) above:

When the total adjusted cost is—	*The allowance for profit is—*
Equal to the total target cost.	Total target profit.
Greater than the total target cost.	Total target profit less ------ percent (------ %) of the amount by which the total adjusted cost exceeds the total target cost.
Less than the total target cost.	Total target profit plus ------ percent (------ %) of the amount by which the total adjusted cost is less than the total target cost.

(d) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (b) above are readily ascertainable. Each subcontract placed by the Contractor hereunder on other than a firm fixed-priced basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence pertinent to the performance of this contract.

(e) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (b) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, and that such costs are correct to the best of his knowledge and belief.

(f) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and

other evidence, pertinent to the performance of the subcontract and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract", as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(g) *Contractor inventory.* Any materials, supplies and property the cost of which is allocable to the contract and included in the total adjusted cost, which are on hand upon the completion of the contract, shall be disposed of in accordance with the applicable Government regulations covering the disposition of Contractor inventory and any proceeds of such disposition shall be used to reduce the total adjusted cost established pursuant to paragraph (c) above. Any materials, supplies and property which are on hand upon the completion of the contract, which are not allocable to the contract and as to which no costs have been included in the total adjusted cost, shall be and remain the property of the Contractor.

(h) *Contract modification.* The total adjusted price, as determined in accordance with paragraph (c) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such final contract price shall apply to all work and services performed under this contract.

(i) *Adjustment of payment estimates.* If at any time it appears that the final contract price will be substantially greater or less than (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items completed, the Contracting Officer may adjust each payment estimate thereafter to be made under the contract by increasing or decreasing the net amount of such payment estimate by the indicated percentage of variation: *Provided, however,* That in no event shall the percentage of increase exceed that indicated in paragraph (a)(iii) above. Any adjustment of payment estimates under this paragraph shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(j) *Limitation on payments.* Notwithstanding any provisions of this contract authorizing greater payment, the total of all amounts paid or payable under this contract, until price revision has been made to the full extent permitted by this contract, shall not exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (i) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable to the contract and (ii) the total amount of target profit used in establishing the total target price and allocable by direct proportion to the work or services performed. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which work or services are first performed under this contract and as of the end of each quarter thereafter, the Contractor shall submit a statement setting forth the respective amounts of each of the two numbered items next above, together with the total of all amounts paid or payable under this contract as of the end of each such quarter. If on any quarterly statement the total of the amounts paid exceeds the sum of the two numbered items above, this gross excess shall be paid immediately by the Contractor to the Government or credited against existing unpaid billings.

(k) *Disagreement.* If the Contractor and the Contracting Officer are unable to agree upon the final contract price within 60 days after the date on which the data required by (b) above are to be submitted or within such further time as specified by the Contracting Officer, the Contracting Officer shall resolve the disagreement by issuing a decision pursuant to the clause of this contract entitled "Disputes."

(l) *Termination.* (1) In the event of a complete termination, the amount payable to the Contractor shall be established in accordance with the clause of this contract entitled "Termination for Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extension" as applicable.

(2) In the event of a partial termination, the amount payable to the Contractor as to the work and services terminated shall be established in accordance with the clause of this contract entitled "Termination for the Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions" as applicable. As to the work and services not terminated the provisions of this clause shall apply.

§ 7.603–24 Shop drawings.

(a) Insert the following clause, with the appropriate addition in paragraph (b) of this section, in contracts requiring the submission of shop drawings for review prior to construction:

SHOP DRAWINGS (JANUARY 1965)

The Contractor shall submit to the Contracting Officer for approval ____ copies (four unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. These drawings shall be complete and detailed. If approved by the Contracting Officer, each copy of the drawings will be identified as having received such approval by being so stamped and dated. The Contractor shall make any corrections required by the Contracting Officer. If the Contractor considers any correction indicated on the drawings to constitute a change to the contract drawings or specifications, notice as required under the clause entitled "Changes" will be given to the Contracting Officer. _____ sets (three unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor. The approval of the drawings by the Contracting Officer shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error which may exist as the Contractor shall be responsible for the dimensions and design of adequate connections, details, and satisfactory construction of all work.

(b) "As built" shop drawings may be required for the permanent record of the using agency.

(1) When reproducible shop drawings are required, the following provision shall be added to the clause in paragraph (a) of this section:

Upon the completion of the work under this contract, the Contractor shall furnish a complete set of reproducibles of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(2) If reproducible shop drawings are not required, the following provision shall be added to the clause in paragraph (a) of this section:

Upon the completion of the work under this contract, the Contractor shall furnish ____ complete sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

§ 7.603–25 Physical data.

(a) All the information concerning local conditions pertaining to the performance of the contract work, which has been made available to the Contractor should be referenced into the contract by completing the clause set forth in paragraph (b) of this section. Wherever test borings, analyses, or hydrographic data are to be made available to the Contractor, the wording of this special clause should be such as only to inform the Contractor as to the source of the data and where it may be examined.

(b) Contract clause:

PHYSICAL DATA (JANUARY 1965)

Information and data furnished or referred to below are furnished for the Contractor's information. However, it is expressly understood that the Government will not be responsible for any interpretation or conclusion drawn therefrom by the Contractor.

(a) The physical conditions indicated on the drawings and in the specifications are the result of site investigations by (insert investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels, etc.)

(b) Weather Conditions. (Insert summary of weather records and warnings.)

(c) Transportation facilities. (Insert the summary of transportation facilities accessible to project, availability, and limitations.)

(d) _____. (Insert other pertinent information.)

§ 7.603–26 Disputes concerning labor standards.

Insert the following clause in all contracts subject to the Davis-Bacon Act.

DISPUTES CONCERNING LABOR STANDARDS (JANUARY 1965)

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of the contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

§ 7.603–27 Variations in estimated quantity contracts.

Insert the following clause in contracts containing estimated quantity items when the Contracting Officer has reserved the right to vary the estimated quantity during the performance of the work to accommodate actual conditions encountered:

VARIATIONS IN ESTIMATED QUANTITIES (JANUARY 1965)

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen (15%) percent above or

below the estimated quantity stated in this contract, as it may hereafter be modified, an equitable adjustment in the contract unit price shall be made upon demand of either party. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify. If the parties fail to agree upon an equitable adjustment in the contract price or time the dispute shall be determined as provided in the clause of this contract entitled "Disputes".

§ 7.603–28 Identification of Government furnished property.

Insert the following clause when required. The point at which the Government-furnished property will be delivered to the Contractor should be specifically stated as a part of the information furnished under the special clause on physical data (see § 7.603–25). Special provisions may be required in addition to the clause herein to cover Government or another Contractor's installation, preparation for operation, or testing of equipment.

IDENTIFICATION OF GOVERNMENT FURNISHED PROPERTY (JANUARY 1965)

The Government will furnish to the Contractor the following property to be incorporated or installed in the work or used in its performance. Such property will be furnished f.o.b. railroad cars at the place specified in paragraph _____, or f.o.b. truck at the project site and the Contractor will be required to accept delivery when made, paying any demurrage incurred, and unloading and transporting the property to the job site at his own expense. All such property will be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated herein. The Contractor shall verify the quantity and condition of such Government-furnished property when delivered to him, acknowledge receipt thereof in writing to the Contracting Officer, and in case of damage to or shortage of such property, he shall within 24 hours report in writing such damage or shortage to the Contracting Officer.

Quantity	Item	Description

§ 7.603–29 Salvage materials and equipment.

Insert the following clause in contracts which involve Government-furnished property which is to be salvaged and reused:

SALVAGE MATERIALS AND EQUIPMENT (JANUARY 1965)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment and shall replace, at no cost to the Government, all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

§ 7.603–30 Availability and use of utility services.

Insert the following clause in contracts for performance at Government installations when it is determined that Government-owned and operated utility systems and supplies are adequate for the needs of and use of the Contractor as well as the Government.

AVAILABILITY OF UTILITY SERVICES (JANUARY 1965)

It has been determined by the Contracting Officer that Government-owned and operated utility systems and supplies are adequate for the needs and use of the Contractor as well as the Government. All reasonably required amounts of water, gas, electricity, etc., will be made available to the Contractor by the Government from existing system outlets and supplies. The Contractor shall, at his own expense, make all temporary connections and install distribution lines and meters, as required, to determine the amount of water, gas or electricity used by him and such utilities will be paid for by or charged to the Contractor at prevailing rates charged to the Government or, in the event the water, gas or electricity is produced by the Government at reasonable rates as determined by the Contracting Officer. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Contracting Officer and shall be removed by the Contractor in like manner at his expense prior to final acceptance of the construction.

§ 7.603–31 Layout of work.

Insert the following clause in construction contracts on a lump sum basis except in contracts for (a) airfield pavement construction, (b) dredging, and (c) unit price contracts in which the payment quantity is to be established by field surveys.

LAYOUT OF WORK (JANUARY 1965)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

§ 7.603–32 Misplaced material.

Insert the following clause in all contracts involving work near or on navigable waterways.

MISPLACED MATERIAL (JANUARY 1965)

Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899. (33 U.S.C. 410 et seq.)

§ 7.603–33 Signal lights.

Insert the following clause in all contracts requiring the use of marine equipment.

SIGNAL LIGHTS (JANUARY 1965)

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army (33 CFR 201.1–201.16) and the Commandant, U.S. Coast Guard (33 CFR 80.18–80.31a and 33 CFR 95.51–95.70).

§ 7.603–34 Identification of employees.

A clause substantially as follows shall be inserted in all construction contracts where identification is required for security or other reasons:

IDENTIFICATION OF EMPLOYEES (JANUARY 1965)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

§ 7.603–35 Superintendence of subcontractors.

Insert the clause set forth below in contracts for work of a highly technical and complicated nature requiring extraordinary control by the Contractor of the several parts of the work, or in contracts covering work spread over several places on the site of work.

SUPERINTENDENCE OF SUBCONTRACTORS (JANUARY 1965)

(a) The Contractor shall be required to furnish the following, in addition to the superintendence required by the General Provision entitled "Superintendence by Contractor":

(i) If more than 50 percent and less than 70 percent of the value of the contract work is subcontracted, one superintendent shall be provided at the site and on the Contractor's payroll to be responsible for coordinat-

ing, directing, inspecting and expediting the subcontract work.

(ii) If 70 percent or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(b) If the Contracting Officer, at any time after 50 percent of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirement for additional superintendence subject to the right of the Contracting Officer to reinstate such requirement if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

§ 7.603–36 Time extensions for delays to elements of the work.

The following clause shall be inserted in contracts in which there are separate completion dates for various items of work and liquidated damages are provided for:

TIME EXTENSIONS (JANUARY 1965)

Notwithstanding any other provisions of this contract it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule.

§ 7.603–37 Payment for mobilization and preparatory work.

Insert one of the appropriate following clauses in contracts containing a separate bid item for mobilization and preparatory work with the approval of the head of the procuring activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stock piles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a Contractor qualified to undertake the work, insert the following clause.

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK, PAYMENT ITEM NO. _____ (JANUARY 1965)

(a) Payments will be made under this contract on the actual expenditures made by the Contractor for mobilization and preparatory work under payment Item No. _____ as follows: The Contractor may submit to the Contracting Officer certified accounts of the actual payments made by him for construction plant exceeding $10,000 in value per unit, as appraised by the Contracting Officer at the site of the work, acquired for the execution of the work; for the transportation of all plant and equipment to the site; for material purchased for the prosecution of the contract, but not to be incorporated in the work; for construction of camps, access roads or railroads, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities and construction yards, and for personal services and hire of plant on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of the contract. Accounts so submitted must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agreement that it will not be removed from the site and that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Contracting Officer. If the Contracting Officer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency, payment, less the prescribed retained percentage, will be made therefor to the Contractor. Payment for construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Contracting Officer. In no event shall such payment exceed 100 percent of the cost to the Contractor of any such items which have no appreciable salvage value and 75 percent of the cost to the Contractor of such items which have an appreciable salvage value. No payment will be made in reimbursement of the premium paid on the performance bond or payment bond. The findings of the Contracting Officer as to the suitability and value of the construction plant, equipment, materials, structures or facilities shall not be subject to appeal.

(b) Payments for mobilization and preparatory work will be made in accordance with (a) above, and such payments will be deducted from the contract price for Item No. _____ "Mobilization and Preparatory Work" until the total amount thus charged to this item reduces this item to zero, after which no further payments will be made under this item. If the total of such payments made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract. The retained percentage will be paid in accordance with the clause of this contract entitled "Payments to Contractor".

(b) (1) In contracts involving major mobilization expense of plant, equipment and materials other than such as are covered in paragraph (a) of this section, which is occasioned by the location or nature of the work; such as mobilization at an offshore location or towing a dredge to a remote location, insert the following clause:

MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. _____ (JANUARY 1965)

(a) All costs connected with the mobilization and demobilization of all of the contractor's dredging plant and equipment will be paid for at the contract lump sum price for this item. _____ percent (_____ percent) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining _____ (_____ percent) will be included in the final payment for work under this contract.

(b) In the event the Contracting Officer considers that the amount in this item (_____ percent), which represents mobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(2) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the above clause, attributed to mobilization should generally be sixty percent (60%) and the remaining forty percent (40%) considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed eighty percent (80%) of the payment item.

§ 7.603–38 Exclusion of periods in computing completion schedules.

Insert the following clause in contracts which provide that no work will be required between certain dates:

EXCLUSION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (JANUARY 1965)

No work will be required during the period between _____ and _____ inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than* (_____ cubic yards) (the average monthly work necessary to complete the contract within the time specified) and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than* (_____ cubic yards) (the average monthly work necessary to complete the contract within the time specified).

*Delete inapplicable provision.

§ 7.603–39 Amount of liquidated damages.

(See § 18.113.) Insert the following clause in contracts providing for liquidated damages:

LIQUIDATED DAMAGES (JANUARY 1965)

In case of failure on the part of the Contractor to complete the work within the time fixed in the contract or any extensions thereof, the Contractor shall pay to the Government as liquidated damages, pursuant to the clause of this contract entitled "Terminations for Default—Damages for Delay—Time Extensions", the sum of _____ for each day of delay.

§ 7.603–40 Required source for jewel bearings.

In accordance with the requirements of § 1.315 of this chapter, insert the clause set forth therein.

§ 7.603–41 Employment of ocean-going vessels by construction contractors.

In accordance with the requirements of § 1.1409 of this chapter, insert the clause set forth therein.

§ 7.604 Additional clauses.

The following clauses shall be inserted in contracts where it is desired to cover the subject matter thereof in such contracts.

§ 7.604–1 Alterations in contract.

The following clause may be used if applicable, in negotiated contracts where Standard Form 23 is not used:

ALTERATIONS (JANUARY 1961)

The following alterations were made in this contract before it was signed by the parties hereto.

§ 7.604–2 Approval of contract.

The contract clause set forth in § 7.105–2 may be inserted.

§ 7.605 Required clauses for cost-reimbursement type construction contracts.

The following clauses shall be inserted in all cost-reimbursement type construction contracts:

§ 7.605–1 Statement of work.

STATEMENT OF WORK (JANUARY 1965)

The Contractor shall furnish all labor, materials, equipment, and services (except those furnished by the Government) for the construction of (insert a brief description of the project) in accordance with the drawings and specifications or instructions attached hereto as Appendix "A" and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction and instructions.

§ 7.605–2 Changes.

Insert the clause set forth in § 7.203–2 with the following changes in wording: Delete the first sentence and substitute "The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in the plans and specifications or instructions incorporated herein". Delete the words "delivery schedule" from the second sentence and substitute the words "completion time".

§ 7.605–3 Estimated cost, performance period.

ESTIMATED COST, PERFORMANCE PERIOD (JANUARY 1965)

It is estimated that the construction cost of work required under this contract will be _____ Dollars, ($_____), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before _____, 19___. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of either of these estimates.

§ 7.605–4 Limitation of cost.

Insert the clause set forth in § 7.203–3 with the following changes in wording. Delete the word "schedule" wherever it appears and substitute the words "this contract".

§ 7.605–5 Allowable cost, fixed fee, and payment.

Insert the clause set forth in § 7.203–4(a) with the following changes:

(a) Delete paragraph (a) and substitute the following:

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer* to be allowable in accordance with—

(A) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) a fixed fee in the amount of _____ Dollars ($_____).

(b) Delete paragraph (c) and substitute the following:

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer.* Payment of the fixed fee, if any, shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer*; *Provided, however,* That after payment of eighty-five per cent (85%) of the fixed fee set forth in (a) above, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside. (January 1965)

*For contracts of the Department of the Navy, see § 7.203–4(c)(1).

§ 7.605–6 Insurance.

INSURANCE (JANUARY 1965)

(a) The Contractor shall procure and thereafter maintain such bonds and insurance in such forms and such amounts and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof.

(b) In every instance where this contract requires the United States to reimburse the Contractor for the payment of the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of the Clause entitled "Allowable Cost, Fixed Fee and Payment" hereof, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government, of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

§ 7.605–7 Direction of work.

DIRECTION OF WORK (JANUARY 1965)

During the performance of this contract, the work shall be under the full-time resident direction of the Contractor, if an individual; of one or more principal partners if the Contractor is a partnership; or in case the Contractor is a corporation, association, or similar legal entity, one or more senior officers thereof; *Provided, however,* That the Contractor, whether an individual, a partnership, a corporation, or other legal entity, may be represented in the direction of the work by some person of a class other than those specified above, if the Contracting Officer gives his approval. In any event, the Contractor shall not be entitled to be reimbursed for any salary, wages or like compensation paid for such direction of the work, whether performed by an individual, a partner, a corporate officer or other representative.

§ 7.605–8 Discounts.

DISCOUNTS (JANUARY 1965)

The Contractor shall, to the extent of his ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits he shall promptly notify the Contracting Officer of the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, commissions, and bonifications which have accrued to the benefit of the Contractor or would have so accrued but for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

§ 7.605–9 Direct payments.

DIRECT PAYMENTS (JANUARY 1965)

(a) *To suppliers, laborers, and mechanics.* If bills for purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the Contractor's fee.

(b) *To common carriers.* The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

§ 7.605–10 Approved construction plant.

APPROVED CONSTRUCTION PLANT (JANUARY 1965)

Upon approval of the Contracting Officer, construction plant furnished by the Contractor will be shown in the attached Appendix "B" or modification thereto.

§ 7.605–11 Audit and records.

In accordance with the requirements of § 7.104–41, insert the clause set forth in (c) thereof.

§ 7.605–12 Price reduction for defective cost or pricing data.

Insert the clause set forth in § 7.104–29(a).

§ 7.605–13 Subcontractor cost and pricing data.

Insert the clause set forth in § 7.104–42(a).

§ 7.605–14 Government property.

Insert the clause set forth in § 13.703 of this chapter.

§ 7.605–15 Examination of records.

Insert the clause set forth in § 7.203–7.

§ 7.605–16 Contracting Officer's decisions.

CONTRACTING OFFICER'S DECISIONS (JANUARY 1965)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

§ 7.605–17 Disputes.

Insert the clause set forth in § 7.602–6.

§ 7.605–18 Labor.

In accordance with the requirements of § 12.403 of this chapter, insert the appropriate clauses set forth therein.

§ 7.605–19 Equal opportunity.

Insert the clause set forth in § 12.802 of this chapter.

§ 7.605–20 Notice to the Government of labor disputes.

Insert the clause set forth in § 7.104–4.

§ 7.605–21 Special requirements.

SPECIAL REQUIREMENTS (JANUARY 1965)

The Contractor hereby agrees that he will:

(a) Be responsible for obtaining any necessary licenses and permits, and complying with any applicable Federal, State and municipal laws, codes, and regulations in connection with the prosecution of the work.

(b) Reduce to writing, unless this provision is waived in writing by the Contracting Officer, every contract in excess of Two Thousand Dollars ($2,000) made by him for the purpose of the work hereunder for services, materials, supplies, machinery, equipment, or for the use thereof, insert therein a provision that such contract is assignable to the Government, make all such contracts in his own name, and not bind or purport to bind the Government or the Contracting Officer thereunder.

(c) Furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with the progress schedule approved by the Contracting Officer.

(d) Cause all work under this contract to be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

§ 7.605–22 Composition of contractor.

Insert the clause set forth in § 7.602–32.

§ 7.605–23 Subcontracts.

In accordance with the requirements of § 3.903–2 of this chapter insert the clause set forth in § 7.203–8(a) subject to the instructions in § 7.203–8 (b) and (c) except that in (c) the variations specified therein may be established by the head of a procuring activity

§ 7.605–24 Accident prevention.

Insert the clause set forth in § 7.602–42.

§ 7.605–25 Contractor's organization and methods.

CONTRACTOR'S ORGANIZATION AND METHODS (JANUARY 1965)

Upon the execution of this contract, the Contractor shall submit to the Contracting Officer a chart showing in general the executive and administrative organization, duties, and personnel to be employed in connection with the work under the contract; and the data so furnished shall be supplemented as additional information becomes available.

§ 7.605–26 Termination.

Insert the clause set forth in § 8.702(a) of this chapter as modified by § 8.702(b).

§ 7.605–27 Convict labor.

Insert the clause set forth in § 12.203 of this chapter.

§ 7.605–28 Officials not to benefit.

Insert the clause set forth in § 7.602–19.

§ 7.605–29 Covenant against contingent fees.

Insert the clause set forth in § 7.103–20.

§ 7.605–30 Gratuities.

Insert the clause set forth in § 7.104–16.

§ 7.605–31 Assignment of claims.

If the contract is negotiated in contemplation that the contractor may make an assignment, insert the clause set forth in § 7.602–8.

§ 7.605–32 Renegotiation.

Insert the appropriate clause set forth in § 7.103–13.

§ 7.605–33 Authorization and consent.

In accordance with the requirements of § 9.102–1 of this chapter, include the clause set forth therein.

§ 7.605–34 Notice and assistance regarding patent and copyright infringement.

In accordance with the requirements of § 9.104 of this chapter, insert the clause set forth therein.

§ 7.605–35 Patent indemnity.

Insert the clause set forth in § 7.602–16.

§ 7.605–36 Utilization of small business concerns.

In accordance with § 1.707–3(a) of this chapter, insert the claus e set forth therein.

§ 7.605–37 Competition in subcontracting.

Insert the clause set forth in § 7.104–40.

§ 7.605–38 Definitions.

Insert the clause set forth in § 7.602–1.

§ 7.605–39 Excusable delays.

In accordance with § 18.624 of this chapter, insert the clause set forth in § 8.708 of this chapter.

§ 7.606 Clauses to be used where applicable for cost-reimbursement type construction contracts.

§ 7.606–1 Incentive fee clause for cost-type construction contracts.

(a) In accordance with § 3.405–4 of this chapter, the clause set forth below shall be inserted in cost-type construction contracts which provide for an adjustment in the Contractor's fee to reflect the efficiency and economy exercised by the Contractor in the performance of the contract.

(b) Incentive fee cost reimbursement construction contracts will be prepared by using the cost-plus-a-fixed-fee construction contract format set forth in § 16.402–3 of this chapter, including the clauses in §§ 7.605 through 7.606–13, modified in the following particulars:

(1) Change the title of the format to read "Cost-Plus-an-Incentive-Fee Construction Contract";

(2) Delete the clause entitled "Allowable Cost, Fixed Fee and Payment";

(3) Insert the clause set forth in § 7.203–4(b) entitled "Allowable Cost, Incentive Fee and Payment" with the following changes:

(i) Delete paragraph (a)(1) and substitute: "For the performance of this contract the Government shall pay to the Contractor—

(*a*) the cost thereof (hereinafter referred to as "Allowable Cost") determined by the Contracting Officer*

(*1*) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(*2*) The terms of this contract; and

(*b*) A fee in the amount of _____ dollars ($_____) adjusted as provided in (i) below."

(ii) Delete paragraph (a)(2) and substitute: "The target cost and target fee of this contract _____ dollars ($_____) and _____ dollars ($_____) respectively shall be subject to adjustment in accordance with (h) and (i) below.

As used herein the term—

(*a*) "target cost" means the estimated cost, exclusive of the estimated amount of rental for Contractor-owned or controlled equipment, of this contract initially negotiated adjusted in accordance with (h) below; and

(*b*) "target fee" means the fee which was initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below".

(iii) Delete paragraph (c) and substitute the following: "Promptly after receipt of each invoice or voucher and statement of cost the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer.* Payment of the fee shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting officer*: *Provided, however,* That after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, further payment on account of the fee shall be withheld until a reserve of either fifteen percent (15%) of the target fee, or one hundred thousand dollars ($100,000), whichever is less shall have been set aside".

(iv) Delete subparagraph (i) and substitute: "The fee payable hereunder shall be the target fee increased by (insert Contractor's participation), cents for each dollar by which the total allowable cost, exclusive of the total rental paid for Contractor-owned or controlled equipment, is less than the target cost; or decreased by (insert Con-

*For contracts of the Department of the Navy, see § 7.203–4(c)(1).

tractor's participation), cents for each dollar by which the total allowable cost, exclusive of the total rental for Contractor-owned or controlled equipment, exceeds the target cost. In no event shall the fee be greater than _____ percent or less than _____ percent of the target cost; and within these limits such fees shall be subject to adjustment by reason of the increase or decrease of the total allowable cost on account of payments under the assignment required by (f)(i) above and claims excepted from the release required by (f)(ii) above."

§ 7.606–2 Approval of wage rates.

Insert the following clause in contracts to be performed in the United States:

APPROVAL OF WAGE RATES (JANUARY 1965)

All wage rates in excess of the applicable Davis-Bacon Wage rates for this contract, including compensation for overtime pursuant to paragraph 2 of Standard Form 19–A, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Head of a Procuring Activity or a representative expressly designated by him for that purpose. Any amount paid by the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Head of a Procuring Activity or a representative expressly designated by him for that purpose shall be at the expense of the Contractor and shall not be reimbursed by the Government.

§ 7.606–3 Buy American.

In accordance with § 6.204 of this chapter, insert the clause set forth in § 6.204–5 of this chapter.

§ 7.606–4 Nondomestic construction materials.

In accordance with § 6.204–4 of this chapter, insert the clause set forth therein.

§ 7.606–5 Priorities, allocations, and allotments.

Insert the clause set forth in § 7.104–18.

§ 7.606–6 Interest.

In accordance with §§ 163.118 and 163.119 of this chapter, insert the clause set forth in § 163.118.

§ 7.606–7 Military security requirements.

In accordance with § 7.104–12, insert the clause set forth therein in contracts involving classified material, except those to be performed outside the United States, its possessions and Puerto Rico.

§ 7.606–8 Workmen's compensation insurance (Defense Base Act).

In accordance with § 10.403 of this chapter, insert the contract clause set forth therein in contracts to be performed outside the United States.

§ 7.606–9 Use of foreign currency. [Reserved]

§ 7.606–10 Alterations.

Insert the clause set forth in § 7.604–1.

§ 7.606–11 Payment for overtime premiums.

In accordance with the requirements of § 12.102–3(a) of this chapter, insert the clause set forth therein.

§ 7.606–12 Small business subcontracting program.

In accordance with § 1.707–3(c) of this chapter, insert the clause set forth therein.

§ 7.606–13 Approval of contract.

Insert the clause set forth in § 7.105–2 where approval of the contract is required.

§ 7.607 Required clauses for lump sum architect-engineer contracts.

The following clauses shall be inserted in all lump-sum architect-engineer contracts:

§ 7.607–1 Method of payment.

METHOD OF PAYMENT (JANUARY 1965)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Architect-Engineer under this contract, such estimates to be prepared by the Architect-Engineer and accompanied by such supporting data as may be required by the Contracting Officer.

(b) Upon approval of such estimate by the Contracting Officer payment upon properly certified vouchers shall be made to the Architect-Engineer as soon as practicable of 90 percent of the amount as determined above, less all previous payments: *Provided, however,* That if the Contracting Officer determines that the work is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Government, he may at his discretion release to the Architect-Engineer such excess amount.

(c) Upon satisfactory completion by the Architect-Engineer and acceptance by the Contracting Officer of the work done by the Architect-Engineer in accordance with the foregoing "Statement of Architect-Engineer Services", the Architect-Engineer will be paid the unpaid balance of any money due for work under said statement, including retained percentages relating to this portion of the work. In the event that the Government exercises the option under Title II of this Contract, progress payments as provided for in (a) and (b) above will be made for this portion of the contract work.

(d) Upon satisfactory completion of the construction work and its final acceptance, the Architect-Engineer shall be paid the unpaid balance of any money due hereunder. Prior to such final payment under the contract, or prior settlement upon termination of the contract, and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

§ 7.607–2 Drawings and other data to become property of Government.

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (JANUARY 1965)

All drawings, designs, specifications, architectural designs of buildings and structures, notes and other architect-engineer work produced in the performance of this contract and all as-built drawings produced after completion of the work shall be and remain the sole property of the Government and may be used on any other work without additional cost to the Government; and with respect thereto the Architect-Engineer agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The Architect-Engineer for a period of three (3) years after completion of the project agrees to furnish and provide access to the originals or copies of all such materials on the request of the Contracting Officer.

§ 7.607–3 Contracting officer's decisions.

CONTRACTING OFFICER'S DECISIONS (JANUARY 1965)

The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer.

§ 7.607–4 Disputes.

Insert the clause set forth in § 7.602–6, substituting "Architect-Engineer" for "Contractor" wherever the latter term is used.

§ 7.607–5 Changes.

CHANGES (JANUARY 1965)

The Contracting Officer may at any time, by written order, and without notice to the sureties, make changes within the general scope of the contract in the work and service to be performed. If any such changes cause an increase or decrease in the Architect-Engineer's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Architect-Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Architect-Engineer of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract; but nothing provided in this clause shall excuse the Architect-Engineer from proceeding with the prosecution of the work as changed. Except as otherwise provided in this contract, no charge for any extra work or material will be allowed.

§ 7.607–6 Subcontractors and outside associates and consultants.

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (JANUARY 1965)

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

§ 7.607–7 Termination for convenience of the Government.

Insert the clause set forth in § 8.701(a) of this chapter as modified by §§ 8.701(d) or 8.705–2 as appropriate.

§ 7.607–8 Covenant against contingent fees.

Insert the clause set forth in § 7.103–20 substituting "Architect-Engineer" for "Contractor".

§ 7.607–9 Officials not to benefit.

Insert the clause set forth in § 7.602–19.

§ 7.607–10 Assignment of claims.

Insert the clause set forth in § 7.602–8 substituting "Architect-Engineer" for "Contractor".

§ 7.607–11 Accident prevention.

Insert the clause set forth in § 7.602–42, except in contracts for Title I services only, where no field work is involved, substituting "Architect-Engineer" for "Contractor".

§ 7.607–12 Equal opportunity.

Insert the clause set forth in § 12.802 of this chapter, in contracts exceeding $10,000.

§ 7.607–13 Convict labor.

Insert the clause set forth in § 12.203 of this chapter, substituting "Architect-Engineer" for "Contractor".

§ 7.607–14 Contract Work Hours Standards Act—Overtime compensation.

Insert the clause set forth in § 12.403–1 of this chapter in contracts exceeding $2,500.

§ 7.607–15 Renegotiation.

Insert the appropriate clause set forth in § 7.103–13, substituting "Architect-Engineer" for "Contractor".

§ 7.607–16 Definitions.

Insert the clause set forth in § 7.602–1.

§ 7.607–17 Gratuities.

Insert the clause set forth in § 7.104–16, substituting "Architect-Engineer" for "Contractor".

§ 7.607–18 Examination of records.

Insert the clause set forth in § 7.104–15, substituting "Architect-Engineer" for "Contractor".

§ 7.607–19 Interest.

In accordance with §§ 163.118 and 163.119 of this chapter, insert the clause set forth in § 163.118.

§ 7.607–20 Military security requirements.

Insert the clause set forth in § 7.104–12.

§ 7.607–21 Composition of contractor.

Insert the clause set forth in § 7.602–32.

§ 7.607–22 Audit and records.

In accordance with § 7.104–41 insert the appropriate clause set forth therein.

§ 7.607–23 Price reduction for defective cost or pricing data.

Insert the clause set forth in § 7.104–29 (a).

§ 7.607–24 Subcontractor cost and pricing data.

Insert the clause set forth in § 7.104–42 (a).

§ 7.607–25 Alterations.

Insert the clause set forth in § 7.604–1.

§ 7.607–26 Termination for default.

Insert the clause set forth in § 8.711 of this chapter.

L. H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 65–10714; Filed, Oct. 7, 1965; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREG.

Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and a proposed rate of assessment, to be effective under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oreg., was published in the FEDERAL REGISTER August 18, 1965 (30 F.R. 10247). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit written data, views, or arguments pertaining thereto not later than 15 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were recommended by the Idaho-Eastern Oregon Potato Committee, established pursuant to said amended marketing agreement and order, it is hereby found and determined that:

§ 945.218 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning June 1, 1965, and ending May 31, 1966, by the Idaho-Eastern Oregon Potato Committee, for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $30,000.00.

(b) The rate of assessment to be paid by each handler in accordance with the amended marketing agreement and this part, shall be 70 cents per carload or fraction thereof, or per truckload of 5,000 pounds or more, of potatoes handled by him as the first handler thereof during said fiscal period.

(c) Terms used in this section have the same meaning as when used in the said amended marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective time of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that: (1) The relevant provisions of said marketing agreement and this part required that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period, and (2) the current fiscal period began on June 1, 1965, and the rate of assessment herein fixed will automatically apply to all assessable potatoes beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 4, 1965.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 65–10721; Filed, Oct. 7, 1965; 8:45 a.m.]

[948.350]

PART 948—IRISH POTATOES GROWN IN COLORADO

Limitation of Shipments, Area No. 1

Findings. (a) Pursuant to Marketing Agreement No. 97, as amended, and Order No. 948, as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in Colorado, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of recommendations and information submitted by the Area No. 1 Committee, established pursuant to the said marketing agreement and order, and other available information, it is hereby found that the limitation of shipments, hereinafter set forth, will tend to effectuate the declared policy of the act thereby maintaining orderly marketing conditions tending to increase returns to producers of such potatoes.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that (1) shipments of 1965 crop potatoes grown in Area No. 1 have begun, (2) to maximize benefits to producers, this regulation should be made effective as soon as practicable, (3) producers and handlers have operated under the said marketing order program since 1949 so special preparation on the part of handlers is not required, and (4) information regarding the committee's recommendation has been disseminated to producers and handlers in the production area.

§ 948.350 Limitation of shipments.

During the period from October 11, 1965, through June 30, 1966, no person may handle any lot of potatoes grown in Area No. 1 unless such potatoes meet the requirements of paragraphs (a) and (b) of this section, or unless such potatoes are handled in accordance with the provisions of paragraphs (c), (d), and (e) of this section.

(a) *Minimum grade and size requirements*—(1) *Round varieties.* U.S. No. 2,

or better grade, 2 inches minimum diameter.

(2) *Long varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

(3) *All varieties.* Size B, if U.S. No. 1 or better grade.

(b) *Minimum maturity (skinning) requirements—all varieties.* Not more than "moderately skinned."

(c) *Special purpose shipments.* (1) The quality and maturity requirements set forth in paragraphs (a) and (b) of this section and the inspection and assessment requirements of this part shall not be applicable to potatoes handled for livestock feed.

(2) Potatoes may be handled for chipping or shoestrings if such potatoes meet the grade and size requirements of paragraph (a) of this section except for scab. The maturity requirements of paragraph (b) of this section shall not apply to such potatoes handled for chipping or shoestrings.

(3) The quality and maturity requirements of paragraphs (a) and (b) of this section shall not be applicable to the handling of potatoes for seed as defined in § 948.6 but any lot of potatoes handled for seed shall be subject to assessments.

(d) *Safeguards.* (1) Each handler of potatoes which do not meet the quality and maturity requirements of paragraphs (a) and (b) of this section and which are handled pursuant to paragraph (c) of this section for any of the special purposes set forth therein shall, prior to handling, apply for and obtain a Certificate of Privilege from the committee, which shall require among other things, the handler to furnish such reports and documents as the committee may require showing that the potatoes so handled were utilized for the purpose specified in the Certificate of Privilege.

(e) *Exception to regulations.* The requirements of this part shall not apply to the handling of potatoes grown in the Counties of Dolores, La Plata, and Montezuma during the effective period of this section.

(f) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "moderately skinned," "scab" and "Size B" shall have the same meaning as when used in the U.S. Standards for Potatoes (§§ 51.1540–51.1556 of this title), including the tolerances set forth therein. Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated October 5, 1965, to become effective October 11, 1965.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 65–10738; Filed, Oct. 7, 1965; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1965-Tung Oil Warehouse-Stored Loan Supp.]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1965-Crop Tung Oil Warehouse-Stored Loan Program

The General Regulations Governing Price Support for 1964 and Subsequent Crops of Grain and Similarly Handled Commodities (29 F.R. 2686, 7662; 30 F.R. 4750, 9088, 9877) (hereinafter referred to as the "general regulations") issued by the Commodity Credit Corporation, which contain regulations of general nature with respect to price support loan and purchase operations, are supplemented for tung oil processed from the 1965-crop of tung nuts as follows:

Sec.
1421.3675 Purpose.
1421.3676 Availability.
1421.3677 Eligible tung oil.
1421.3678 Cooperative marketing associations.
1421.3679 Warehouse receipts.
1421.3680 Service charges.
1421.3681 Storage and handling charges.
1421.3682 Maturity of loans.
1421.3683 Redemption of tung oil under loan.
1421.3684 Support rate.
1421.3685 Loan pool.

AUTHORITY: The provisions of this subpart issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 201, 401, 63 Stat. 1052, as amended; 1054; 15 U.S.C. 714c, 7 U.S.C. 1446, 1421.

§ 1421.3675 Purpose.

This subpart, and the general regulations to the extent that the provisions thereof are not made inapplicable by the provisions of this subpart, contain the terms and conditions under which CCC will make warehouse-stored tung oil loans to eligible producers of 1965-crop tung nuts from which the eligible tung oil was extracted. Notwithstanding the provisions of the general regulations, CCC will not purchase or make farm-stored loans on tung oil, and will not purchase or make loans on 1965-crop tung nuts.

§ 1421.3676 Availability.

(a) *Area.* The program will be available in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

(b) *Period.* Loans will be available from November 1, 1965, through September 30, 1966.

(c) *Application for price support.* Producers desiring to obtain price support by means of warehouse-stored loans on eligible tung oil must file an application therefor during the period November 1, 1965, through September 30, 1966.

§ 1421.3677 Eligible tung oil.

Tung oil, to be eligible for price support, must have been extracted from 1965-crop tung nuts produced by eligible producers and must meet the requirements of section 3, when tested in accordance with the provisions of section 4 of Federal Specification TT–T–775, Tung Oil Raw (Chinawood) dated May 28, 1957, as amended (referred to in this subpart as "Federal Specifications"). The tung oil pledged as security for loan must be in approved storage which is a warehouse which has a current storage agreement with CCC. The names and addresses of such warehouses may be obtained from State and county offices.

§ 1421.3678 Cooperative marketing associations.

A cooperative marketing association may obtain warehouse storage loans on behalf of its members on eligible tung oil delivered to it by its members or extracted from tung nuts delivered to it by its members if the association is approved pursuant to the regulations governing the eligibility of cooperative marketing association for price support (30 F.R. 6907) and any amendments thereto.

§ 1421.3679 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a loan must meet the requirements of § 1421.58 of the general regulations and:

(a) Be signed by the warehouseman or his authorized representative.

(b) Show the location of the warehouse.

(c) State the quantity of tung oil guaranteed by the warehouseman.

(d) Guarantee that the tung oil, when delivered, will meet Federal Specifications.

(e) State the date of issuance.

(f) Include a statement or an endorsement in substantially the following form: "All warehouse charges (including insurance) through October 31, 1966, on the tung oil represented by this warehouse receipt have been paid or otherwise provided for, and the warehouseman has no lien upon the tung oil for such charges."

§ 1421.3680 Service charges.

Notwithstanding the provisions of paragraph (b) of § 1421.60 of the general regulations, a charge of 6 cents per hundredweight will be made for the quantity of tung oil tendered to CCC for loan which is not redeemed. Such service charges will be deducted from loan proceeds.

§ 1421.3681 Storage and handling charges.

CCC will not pay or assume the cost of storage, transportation, sampling, insurance, testing, and analysis accruing prior to October 31, 1966, on tung oil placed under loan, nor will CCC pay or assume any handling or processing charges which are necessary to prepare the tung oil to meet eligibility requirements. CCC and any subsequent holders of warehouse receipts covering tung oil shall be entitled to any unexpired portion of the storage time and outloading services to which the producer be-

comes entitled under any contract between the producer and the warehouseman.

§ 1421.3682 Maturity of loans.

Loans will mature on demand.

§ 1421.3683 Redemption of tung oil under loan.

Notwithstanding the provisions of paragraph (c) of § 1421.68 of the general regulations, a producer may arrange with the county office for redemption of all or part of the commodity under loan prior to maturity of the loan or prior to the date such commodity is placed into a loan pool, whichever is earlier, by repayment of the amount of the loan with respect to the quantity of tung oil to be redeemed plus charges and interest. However, the quantity to be redeemed must cover all the tung oil represented by one warehouse receipt. Subject to the provisions of paragraph (b) of § 1421.54 of the general regulations, warehouse receipts redeemed by repayment shall be released only to the producer or his authorized agent, except that redeemed warehouse receipts may be released to persons designated in a written authorization filed with the county office, by the producer or his properly authorized agent, dated within 15 days prior to the date of repayment.

§ 1421.3684 Support rate.

Loans on eligible tung oil shall be made at the rate of 24 cents per pound.

§ 1421.3685 Loan pool.

(a) *Placing tung oil in loan pool.* On or after November 1, 1966, if the loan has not been matured prior thereto, CCC may place tung oil under loan which has not been redeemed in a loan pool to be handled and marketed by a cooperative marketing association approved by CCC. A producer may not redeem the tung oil placed in a loan pool.

(b) *Distribution of net gains.* The producers whose pledged tung oil is placed in the loan pool shall be entitled to share ratably in any net gains remaining upon sale of the tung oil in the pool after deduction from the sales proceeds of all amounts paid out by CCC in connection with the tung oil, including the total amount of the loans made thereon plus charges and interest, and the expenses of handling and marketing the tung oil in the pool, except that if CCC determines that the net gains available for distribution are insufficient to justify the cost of distribution, such net gains shall be credited to the sales proceeds of the loan pool for the next succeeding crop year rather than being distributed to the participants in the 1965-crop loan pool.

(c) *Rights of CCC.* The placing of the tung oil in the loan pool pursuant to this section shall not affect the right of CCC to mature the loan on demand nor shall it affect the rights of CCC as set forth in this subpart, the general regulations, and the loan documents with respect to the tung oil upon maturity of the loan and nonpayment.

Effective date. This subpart shall become effective upon filing with the Office of the Federal Register for publication.

Signed at Washington, D.C., on October 5, 1965.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 65-10737; Filed, Oct. 7, 1965; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. R]

PART 218—RELATIONS WITH DEALERS IN SECURITIES UNDER SECTION 32, BANKING ACT OF 1933

Bank Commingled Investment Account

§ 218.111 Interlocking relationships between bank and its commingled investment account.

(a) The Board of Governors was asked recently whether the establishment of a proposed "Commingled Investment Account ("Account") by a national bank would involve a violation of section 32 of the Banking Act of 1933 in view of the interlocking relationships that would exist between the bank and Account.

(b) From the information submitted, it was understood that Account would comprise a commingled fund, to be operated under the effective control of the bank, for the collective investment of sums of money that might otherwise be handled individually by the bank as managing agent. It was understood further that the Comptroller of the Currency had taken the position that Account would be an eligible operation for a national bank under his Regulation 9, "Fiduciary Powers of National Banks and Collective Investment Funds" (Part 9 of this title). The bank had advised the Board that the Securities and Exchange Commission was of the view that Account would be a "registered investment company" within the meaning of the Investment Company Act of 1940, and that participating interests in Account would be "securities" subject to the registration requirements of the Securities Act of 1933.

(c) The information submitted showed also that the minimum individual participation that would be permitted in Account would be $10,000, while the maximum acceptable individual investment would be half a million dollars; that there would be no "load" or payment by customers for the privilege of investing in Account; and that: "The availability of the Commingled Account would not be given publicity by the Bank except in connection with the promotion of its fiduciary services in general and the Bank would not advertise or publicize the Commingled Account as such. Participations in the Commingled Account are to be made available only on the premises of the Bank (including its branches), or to persons who are already customers of the Bank in other connections, or in response to unsolicited requests."

(d) Such information indicated further that participations would be received by the bank as agent, under a broad authorization signed by the customer, substantially equivalent to the power of attorney under which customers currently deposit their funds for individual investment, and that the participations would not be received "in trust."

(e) The Board understood that Account would be required to comply with certain requirements of the Federal securities laws not applicable to an ordinary common trust fund operated by a bank. In particular, supervision of Account would be in the hands of a committee to be initially appointed by the bank, but subsequently elected by participants having a majority of the units of participation in Account. At least one member of the committee would be entirely independent of the bank, but the remaining members would be officers in the trust department of the bank.

(f) The committee would make a management agreement with the bank under which the bank would be responsible for managing Account's investments, have custody of its assets, and maintain its books and records. The management agreement would be renewed annually if approved by the committee, including a "majority" of the independent members, or by a vote of participants having a majority of the units of participation. The agreement would be terminable on 60 days' notice by the committee, by such a majority of the participants, or by the bank, and would terminate automatically if assigned by the bank.

(g) It was understood also that the bank would receive as annual compensation for its services one-half of one percent of Account's average net assets. Account would also pay for its own independent professional services, including legal, auditing, and accounting services, as well as the cost of maintaining its registration and qualification under the Federal securities laws.

(h) Initially, the assets of Account would be divided into units of participation of an arbitrary value, and each customer would be credited with a number of units proportionate to his investment. Subsequently, the assets of Account would be valued at regular intervals, and divided by the number of units outstanding. New investors would receive units at their current value, determined in this way, according to the amount invested. Each customer would receive a receipt evidencing the number of units to which he was entitled. The receipts themselves would be nontransferable, but it would be possible for a customer to arrange with Account for the transfer of his units to someone else. A customer could terminate his participation at any time and withdraw the current value of his units.

(i) Section 32 of the Banking Act of 1933 provides in relevant part that: "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve [at] the same time as an officer, director, or employee of any member bank * * *."

(j) The Board concluded, based on its understanding of the proposal and on the general principles that have been developed in respect to the application of section 32, that the bank and Account would constitute a single entity for the purposes of section 32, at least so long as the operation of Account conformed to the representations made by the bank and outlined herein. Accordingly, the Board said that section 32 would not forbid officers of the bank to serve on Account's committee, since Account would be regarded as nothing more than an arm or department of the bank.

(k) In conclusion, the Board called attention to section 21 of the Banking Act of 1933 which, briefly, forbids a securities firm or organization to engage in the business of receiving deposits, subject to certain exceptions. However, since section 21 is a criminal statute, the Board has followed the policy of not expressing views as to its meaning. (1934 Federal Reserve Bulletin 41, 543) The Board, therefore, expressed no position with respect to whether the section might be held applicable to the establishment and operation of the proposed "Commingled Investment Account".

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 78)

Dated at Washington, D.C., this 29th day of September 1965.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 65-10741; Filed, Oct. 7, 1965; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 6760; Amdt. 39-147]

PART 39—AIRWORTHINESS DIRECTIVES

Fairchild Model F-27 Series Airplanes

Amendment 598, 28 F.R. 7970, AD 63-16-3, requires special structural inspections and repair if cracks are found on Fairchild Model F-27 Series airplanes. A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive superseding AD 63-16-3 was published in 30 F.R. 8687. The new directive incorporates additional inspection procedures to detect possible progression of original cracks and to detect new cracks in the areas adjacent to repair plate installations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One of the comments received objected to a continuation of the repetitive inspections required in the previous directive. However, as pointed out in the preamble to the Notice on this matter, the Agency considers it necessary to continue the repetitive inspections specified in Fairchild Service Bulletin 51-2 in view of the additional cracking that has occurred in the wing area of the airplane. Another operator objected to the provisions of paragraph (b) as being superfluous and as requiring additional inspections since its airplanes are currently being inspected as required by AD 63-16-3. In this connection it should be noted that AD 63-16-3 is being superseded and that paragraph (b) merely contains the requirements previously set forth in AD 63-16-3. The operator also objected to the AD on the basis that all of its airplanes have been modified in accordance with Service Bulletins 57-4 and 57-5 and that no cracks have been found in the wing plate area. However, the Agency is aware that Service Bulletins 57-4 and 57-5 contain small modifications to the wing access panels and are not designed to stop the fatigue cracking that is the subject of Service Bulletin 51-2.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

FAIRCHILD. Applies to Model F-27 Series airplanes.

Compliance required as indicated.

(a) For airplanes repaired in accordance with Fairchild Service Bulletin 51-2 within the last 575 hours' time in service before the effective date of this AD, comply with paragraphs (c) and (d) beginning within 600 hours' time in service after the repair.

(b) For airplanes not repaired in accordance with Fairchild Service Bulletin 51-2 within the last 575 hours' time in service before the effective date of this AD, comply with paragraphs (c) and (d) beginning within the next 25 hours' time in service after the effective date of this AD.

(c) Inspect in accordance with Fairchild Service Bulletin 51-2, "Structural General-Special Structural Inspections", dated February 2, 1959, Revision 6 dated July 21, 1964, and Supplement Numbers 001 through 005 inclusive, dated May 20, 1964, Revision 2 dated November 20, 1964, or in accordance with an FAA-approved equivalent inspection program.

(d) If cracks are found or if repaired cracks are found to be propagating, replace the cracked part with a part of the same part number or an FAA-approved equivalent, or incorporate an FAA Engineering approved repair before further flight, except that the airplane may be flown in accordance with FAR 21.197 to a base where the repair can be made.

(e) Upon request of an operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for such operator.

This supersedes Amendment 598 (28 F.R. 7970), AD 63-16-3.

This amendment becomes effective November 7, 1965.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, and 1423)

Issued in Washington, D.C., on September 30, 1965.

C. W. WALKER,
Acting Director, Flight Standards Service.

[F.R. Doc. 65-10717; Filed, Oct. 7, 1965; 8:45 a.m.]

[Airspace Docket No. 65-EA-3]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zones, Designation of Transition Areas

On pages 5605 and 5606 of the FEDERAL REGISTER for April 20, 1965, the Federal Aviation Agency published proposed regulations which would alter the Rome, Syracuse, and Utica, N.Y., control zones and designate 700-foot above ground transition areas over Clarence E. Hancock Airport, Syracuse, N.Y., and Oneida County Airport, Utica, N.Y. A 1200-foot above ground Utica, N.Y., transition area would also be designated.

Interested parties were given 45 days after publication in which to submit written data or views. Comments were received from the Soaring Society of America, Inc. which questioned the size of the 1200-foot Utica, N.Y., transition area since it would eliminate a few "elsewhere" areas in which sailplanes can operate uncontrolled. While a few small uncontrolled areas have been incorporated into the 1200-foot transition area, it should be noted that the whole area is presently within 700-foot control area extension airspace and that this rule will lift that 700-foot control to 1,200 feet thereby releasing a large amount of airspace.

Upon recommendation of the U.S. Coast and Geodetic Survey several of the coordinates for Utica, N.Y., 1200-foot transition area have been refined but not to substantially change the rule.

In view of the foregoing, the proposed regulations are hereby adopted effective 0001 e.s.t., November 11, 1965, except as follows:

1. Under Item 5, 3d paragraph, 8th and 11th lines respectively delete the coordinates "43°16'00" N., 74°33'00" W., 43°44'00" N., 75°49'00" W.," and insert in lieu thereof: "43°16'00" N., 74°37'00" 43°44'00" N., 75°49'15" W."

(Sec. 307(a), Federal Aviation Act of 1958; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Jamaica, N.Y., on August 19, 1965.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Rome, N.Y., control zone and insert in lieu thereof:

Within a 5-mile radius of the center, 43°-14'10" N., 75°24'25" W. of Griffiss AFB, Rome, N.Y., and within 2 miles each side of bearing 135°/315° from the Rome, N.Y., RBN extending from the 5-mile radius to 6 miles SE of the RBN; within 2 miles each side of the Griffiss VOR 137° radial extending from the 5-mile radius zone to the VOR; within 2 miles each side of the Griffiss TACAN 305° radial extending from the 5-mile radius zone to 8 miles NW of the TACAN; within 2 miles each side of a bearing 142° from the Rome, N.Y., ILS OM, extending from the OM to 4 miles SE of the OM.

2. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Syracuse, N.Y., control zone and insert in lieu thereof:

That airspace within a 5-mile radius of the center, 43°06'50" N., 76°06'35" W. of Clarence E. Hancock Airport, Syracuse, N.Y., excluding that airspace within a 1-mile radius of the center, 43°11'00" N., 76°07'00" W. of Cicero Airpark, Cicero, N.Y.; and within 2 miles each side of the Syracuse VORTAC 120° radial extending from the 5-mile radius zone to the VORTAC; within 2 miles each side of a bearing 089° from the Syracuse RBN extending from the 5-mile radius zone to the RBN.

3. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Utica, N.Y., control zone and insert in lieu thereof:

Within a 5-mile radius of the center, 43°-08'45" N., 75°22'55" W. of Oneida County Airport, Utica, N.Y., within 2 miles each side of the Utica ILS localizer SE course extending from the 5-mile radius zone to the Utica radio beacon; within 2 miles each side of the Utica VOR 306° radial extending from the 5-mile radius zone to 1.5 miles NW of the VOR and excluding the portion within the Rome, N.Y., control zone.

4. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a 700-foot above ground Syracuse, N.Y., transition area described as follows:

SYRACUSE, N.Y.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the center, 43°06'50" N., 76°06'35" W. of Clarence E. Hancock Airport, Syracuse, N.Y., and within 8 miles N and 5 miles S of the Syracuse ILS localizer East course extending from the 9-mile radius to 12 miles E of the Syracuse LOM; within 5 miles SW and 8 miles NE of the Syracuse VORTAC 309° radial extending from the 9-mile radius to 12 miles NW of the VORTAC; within 8 miles N and 5 miles S of a 269° bearing from the Syracuse RBN extending from the 9-mile radius to 12 miles W of the RBN; within 5 miles each side of the Syracuse VORTAC 242° radial extending from the 9-mile radius to the INT of the Syracuse VORTAC 242° radial and the Ithaca, N.Y., VOR 348° radial.

5. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate 700-foot above ground Utica, N.Y., transition area described as follows:

UTICA, N.Y.

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the center, 43°14'10" N., 75°24'25" W. of Griffiss AFB, Rome, N.Y., and within 2 miles each side of the Griffiss VOR 317° radial extending from the 10-mile radius to 8 miles NW of the VOR; within 2 miles each side of the Griffiss TACAN 305° radial extending from the 10-mile radius to 14 miles NW of the TACAN.

Within a 12-mile radius of the center, 43°08'45" N., 75°22'55" W. of Oneida County Airport, Utica, N.Y., and within 2 miles each side of the Utica VOR 306° radial extending from the 12-mile radius to the VOR; within 2 miles each side of a bearing 137° from the Utica radio beacon extending from the 12-mile radius to 8 miles SE of the radio beacon; within 2 miles each side of a bearing 132° from the Utica radio beacon extending from the 12-mile radius to 9 miles SE of the radio beacon.

That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at 43°24'00" N., 76°53'00" W. to 42°57'00" N., 76°57'00" W. to 42°40'00" N., 77°22'30" W. to 42°41'30" N., 76°23'00" W. to 42°40'00" N., 75°30'00" W. to 43°00'00" N., 74°30'00" W. to 43°19'00" N., 74°30'00" W., to 43°16'00" N., 74°37'00" W., thence counterclockwise along an arc with a radius of 40 SM from the center of Griffiss AFB to 43°44'00" N., 75°49'15" W. to 43°32'00" N., 76°23'00" W. to 43°24'00" N., 76°40'00" W to point of beginning.

[F.R. Doc. 65-10718; Filed, Oct. 7, 1965; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 202—ANCHORAGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Newport Bay Harbor, Calif., et al.

1. Pursuant to the provisions of section 1 of an Act of Congress approved April 22, 1940 (54 Stat. 150; 33 U.S.C. 180), § 202.95 is hereby amended with respect to paragraph (n) revising the "Note" at the end of the paragraph, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 202.95 Newport Bay Harbor, Calif.

* * * * *

(n) *Area B-1.* * * *

NOTE: This area is reserved for recreational and other small craft. Fore and aft moorings, conforming to the City of Newport Beach Harbor Ordinance No. 543, will be allowed in this area for recreational and small craft of such size and alinement as permitted by the harbormaster.

(Regs., Sept. 22, 1965, 1507-32 (Newport Bay Harbor, Calif.)—ENGCW-ON; sec. 1, 54 Stat. 150; 33 U.S.C. 180)

2. Pursuant to the provisions of section 1 of an Act of Congress approved April 22, 1940 (54 Stat. 150; 33 U.S.C. 180), § 202.127 is hereby prescribed designating special anchorage areas in Lake Mohave and Lake Mead, Nevada and Arizona, wherein vessels not more than 65 feet in length, when at anchor, shall not be required to carry or exhibit anchor lights, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 202.127 Lake Mohave and Lake Mead, Nevada and Arizona.

(a) *Willow Beach, Ariz.* That portion of Lake Mohave inclosed by the shore and a line connecting the following points, excluding a 100-foot-wide fairway, extending westerly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	*Longitude*
"a" 35°52'30" N.	114°39'35" W.
"b" 35°52'10" N.	114°39'35" W.

(b) *Katherine, Ariz.* That portion of Lake Mohave inclosed by the shore and a line connecting the following points, excluding a 100-foot-wide fairway, extending westerly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	*Longitude*
"a" 35°13'33" N.	114°34'38" W.
"b" 35°13'05" N.	114°34'40" W.

(c) *El Dorado Canyon, Nev.* That portion of Lake Mohave inclosed by the shore and a line connecting the following points, excluding a 50-foot-wide fairway, extending easterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	*Longitude*
"a" 35°42'37" N.	114°42'21" W.
"b" 35°42'08" N.	114°42'10" W.

(d) *Cottonwood Cove, Nev.* That portion of Lake Mohave inclosed by the shore and a line connecting the following points, excluding a 200-foot-wide fairway extending northeasterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	*Longitude*
"a" 35°29'46" N.	114°40'55" W.
"b" 35°29'33" N.	114°40'45" W.

(e) *Overton Beach, Nev.*—(1) *Area "A".* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding two 300-foot-wide fairways, extending northwesterly and southwesterly from the launching ramps, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	*Longitude*
"a" 36°27'05" N.	114°21'48" W.
"b" 36°27'15" N.	114°21'20" W.
"c" 36°26'32" N.	114°20'45" W.
"d" 36°25'49" N.	114°20'50" W.
"e" 36°25'00" N.	114°21'27" W.
"f" 36°25'19" N.	114°22'10" W.

(2) *Area "B".* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding one 300-foot-wide fairway, extending

southeasterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"g" 36°23'20" N.	114°23'45" W.
"h" 36°22'40" N.	114°22'15" W.
"i" 36°20'30" N.	114°24'35" W.
"j" 36°21'00" N.	114°25'35" W.

(f) *Echo Bay, Nev.* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding a 100-foot-wide fairway, extending southwesterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°18'30" N.	114°25'10" W.
"b" 36°18'20" N.	114°24'00" W.
"c" 36°17'35" N.	114°24'05" W.
"d" 36°17'40" N.	114°24'27" W.

(g) *Callville Bay, Nev.* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding a 200-foot-wide fairway, extending southeasterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°09'00" N.	114°42'40" W.
"b" 36°08'10" N.	114°42'03" W.
"c" 36°08'06" N.	114°42'40" W.

(h) *Las Vegas Wash, Nev.* That portion of Lake Mead inclosed by the shore and a line connecting the following points, excluding a 200-foot-wide fairway, extending easterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°07'23" N.	114°49'45" W.
"b" 36°06'29" N.	114°49'45" W.

(i) *Hemenway Harbor, Nev.* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding a 100-foot-wide fairway, extending easterly from the launching ramp at Boulder Beach and a 600-foot-wide fairway, extending northeasterly from the launching ramp at Hemenway Harbor, both as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°04'05" N.	114°48'15" W.
"b" 36°03'25" N.	114°48'10" W.
"c" 36°01'20" N.	114°45'15" W.

(j) *Kingman Wash, Ariz.* That portion of Lake Mead inclosed by the shore and a line connecting the following points, excluding a 100-foot-wide fairway, extending westerly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°02'34" N.	114°42'50" W.
"b" 36°02'05" N.	114°43'05" W.

(k) *Temple Bar, Ariz.* That portion of Lake Mead inclosed by the shore and lines connecting the following points, excluding a 200-foot-wide fairway, extending southwesterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°02'21" N.	114°19'29" W.
"b" 36°02'34" N.	114°18'46" W.
"c" 36°02'03" N.	114°18'13" W.

(l) *Greggs, Ariz.* That portion of Lake Mead inclosed by the shore and a line connecting the following points, excluding a 100-foot-wide fairway, extending northerly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°00'35" N.	114°13'49" W.
"b" 36°00'35" N.	114°14'10" W.

(m) *Pierce Ferry, Ariz.* That portion of Lake Mead inclosed by the shore and a line connecting the following points, excluding a 100-foot-wide fairway, extending easterly from the launching ramp, as established by the Superintendent, Lake Mead Recreation Area:

Latitude	Longitude
"a" 36°08'42" N.	113°59'24" W.
"b" 36°07'18" N.	113°58'32" W.

NOTE: Fixed moorings, piles, or stakes are prohibited. Single and fore and aft temporary moorings will be allowed. The anchoring of vessels and the placing of temporary moorings will be under the jurisdiction and at the discretion of the Superintendent, Lake Mead Recreation Area, National Park Service.

(Regs., Sept. 22, 1965, 1507-32 (Lake Mohave and Lake Mead, Nevada and Arizona)-ENGCW-ON; sec. 1, 54 Stat. 150; 33 U.S.C. 180)

3. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.618 governing the use and navigation of a seaplane restricted area in Long Beach Harbor, Calif., is hereby revoked effective on publication in the FEDERAL REGISTER, since the area is no longer needed, as follows:

§ 207.618 Long Beach Harbor, Calif.; seaplane restricted area. [Revoked]

(Regs., Sept. 22, 1965, 1507-32 (Long Beach Harbor, Calif.)-ENGCW-ON; sec. 7, 40 Stat. 266; 33 U.S.C. 1)

LAWRENCE H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 65-10715; Filed, Oct. 7, 1965; 8:45 a.m.]

PART 204—DANGER ZONE REGULATIONS

Atlantic Ocean Off Delaware Coast

Pursuant to the provisions of Chapter XIX of the Army Appropriations Act of July 9, 1918 (40 Stat. 892; 33 U.S.C. 3), § 204.25 is hereby amended changing paragraph (b) (1) and (2) prescribing the periods of use of the Army antiaircraft artillery area in the Atlantic Ocean off the Delaware Coast, effective upon publication in the FEDERAL REGISTER since it is desired to fire into the area as soon as possible, as follows:

§ 204.25 Atlantic Ocean off Delaware Coast; Antiaircraft Artillery Firing Areas, Second United States Army.

* * * * *

(b) *The Regulations.* (1) All firing during the months of October to May, inclusive, will be conducted between 8 a.m., and 4 p.m., e.s.t. Scheduled firing during the months June to September, inclusive, will be conducted between 12 noon and 6 p.m., e.s.t. Certain firing may be conducted, however, between 8 a.m., and 12 noon during this latter period and will be rounds fired at fixed points for settling weapons, testing and verification purposes only in accordance with established Department of the Army Safety Regulations, and will involve no restrictions on navigation. No firing will be conducted during hours of darkness.

(2) Firing will take place on certain days other than National holidays during October to May, inclusive, and on certain days other than Saturdays, Sundays, and National holidays during June to September, inclusive, as listed in public notice to be issued each year by the District Engineer, U.S. Army Engineer District, Philadelphia, Pennsylvania.

* * * * *

[Regs., 6 October 1965, 1507-32 (Atlantic Ocean, Del.)-[ENG W-ON] (Chap. XIXC, 40 Stat. 892; 33 U.S.C. 3)

L. H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 65-10772; Filed, Oct. 7, 1965; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Second Rev. S.O. 947]

PART 95—CAR SERVICE

Railroad Operating Regulations for Freight Car Movement

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 1st day of October, A.D. 1965.

It appearing, that an acute shortage of freight cars exists in all sections of the country; that cars loaded and empty are unduly delayed in terminals and in placement at, or removal from industries; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of freight cars are insufficient to promote the most efficient utilization of cars; it is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Ac-

cordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 95.947 Service Order 947.

(a) *Railroad operating regulations for freight car movement.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce and obey the following rules, regulations and practices with respect to its car service:

(1) *Placing of cars.* (i) Loaded cars, which after placement will be governed by demurrage rules applicable to detention of cars awaiting unloading, shall be actually or constructively placed within 24 hours after the first 7 a.m., exclusive of Saturdays, Sundays, and holidays, following arrival at destination.

(ii) Actual placement means placing of car on consignee's tracks, or when for public delivery placement on carrier's tracks accompanied by proper notice.

(iii) When delivery of a car, either empty or loaded consigned or ordered to an industrial interchange track or to other-than-a-public-delivery track cannot be made on account of any condition attributable to the consignee, such car will be held at destination or, if it cannot reasonably be accommodated there, at an available hold point and constructive placement notice shall be sent or given the consignee in writing within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at hold point.

(iv) Loaded cars held at billed destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspection, shall be placed on carrier's or consignee's unloading or inspection tracks, within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival at billed destination. On cars set off and held short of billed destination, a written notice shall be sent or given to consignee within 24 hours following the first 7 a.m., after arrival at hold point.

(2) *Removal of cars.* (i) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within 24 hours after the first 7 a.m., exclusive of Saturdays, Sundays, and holidays, following unloading or release by consignee or shipper, unless such cars unloaded are ordered or appropriated by the shipper for reloading within such a 24-hour period. Empty cars not required for loading at point where made empty must be forwarded in line-haul service within 24 hours after the first 7 a.m., exclusive of Saturdays, Sundays, and holidays, following removal of empty cars.

(ii) Outbound loaded freight cars must be removed from point of loading or interchange tracks of industrial plants within 24 hours after the first 7 a.m., exclusive of Saturdays, Sundays, and holidays, following tender and acceptance by carrier of the bill of lading covering the cars. Such cars must be forwarded in line-haul service within 24 hours after the first 7 a.m., following their receipt in outbound makeup or classification yards.

(3) *Holding cars for prospective loading.* (i) Cars shall not be held for prospective loading at any time, for any industry, or consignor, other than those needed to protect current outbound loading.

(4) *Repair tracks.* (i) Any cars taken out of service for repairs, or carded for repairs, shall be repaired at the earliest time consistent with efficient railroad operating practices.

(5) *Car distribution orders.* (i) Observe, obey, and comply with special car orders and freight car distribution orders now outstanding, or hereafter issued by the Car Service Division, Association of American Railroads, not inconsistent with any order of the Commission. E. Paul Miller, Chairman of the Car Service Division, is directed to inform the Director or the Assistant Director of the Bureau of Railroad Safety and Service of such outstanding orders or similar orders which may be subsequently issued and, to advise the Director or the Assistant Director of the Bureau of Railroad Safety and Service of railroad performance and compliance with such orders.

(ii) R. D. Pfahler, Director, and H. R. Longhurst, Assistant Director, Bureau of Railroad Safety and Service, Interstate Commerce Commission, and each of them, are hereby appointed Agents of the Commission with authority to issue such orders or directions as either may find necessary with respect to the location, relocation, and distribution of freight cars as between sections of the country, or carriers by railroads or on such carriers, throughout the United States.

(6) *Yard checks, supervision and records.* (i) The necessary yard and track checks shall be made and sufficient supervision and records shall be maintained to enable carriers to comply with the provisions of this order.

(7) *Railroad operating regulations for the movement of loaded freight cars.* (i) No common carrier by railroad subject to the Interstate Commerce Act shall willfully delay the movement of loaded freight cars by holding such cars in yards, terminals, or sidings for the purpose of increasing the time in transit of such loaded cars.

(ii) Loaded cars shall not be set out between terminals except in cases of emergencies or sound operating requirements.

(iii) Backhauling loaded cars for the purpose of increasing the time in transit shall constitute willful delay and is prohibited.

(iv) Through loaded cars shall not be handled on local or way freight trains for the purpose of increasing the time in transit of such loaded cars.

(v) The use by any common carrier by railroad, for the movement of loaded freight cars over its line, of any route other than its usual and customary fast freight route from point of receipt of the car from consignor or connecting line, except in emergencies, or for the purpose of according a lawfully established transit privilege (not including a diversion or reconsignment privilege) is hereby prohibited.

(8) *Carrier officials' responsibility.* (i) The division superintendent in charge of each terminal under his jurisdiction or supervision, or if no division superintendent is in charge the general manager of each railroad will be held responsible for car service at each terminal and for the proper observance of the rules prescribed by this order.

(b) *Application.* (1) The provisions of this order shall apply to intrastate and interstate commerce.

(2) When computing the periods of time provided in this order, exclude Saturdays, Sundays, and such holidays as are listed in Item No. 25, Agent H. R. Hinsch's Demurrage Tariff ICC H–11, or reissues thereof, only when they occur within the said periods of time, but not after.

(c) *Regulations suspended—announcement required.* The operation of all rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended and each railroad subject to this order, or its agent, shall publish, file, and post a supplement to each of its tariffs affected hereby, in substantial accordance with the provisions of Rule 9(k) of the Commission's Tariff Circular No. 20, announcing such suspension.

(d) *Effective date.* This order shall become effective at 12 noon, October 1, 1965.

(e) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1965, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15; interprets or applies secs. 1(10–17), 15(4), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 65–10722; Filed, Oct. 7, 1965; 8:46 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

SUBCHAPTER B—HOW TO WRAP AND MAIL

PART 11—PACKAGES

The regulations of the Post Office Department in Part 11 are amended, revised, and expanded to provide more adequate instructions to users of the postal service concerning the standard required in packaging. In addition, §11.1(b) points out that articles inadequately prepared may be refused acceptance in the mail.

Part 11 is revised to read as follows:

Sec.
11.1 Adequacy of packaging standards.
11.2 Containers for mailing.
11.3 Internal protection.
11.4 Outside wrapping.
11.5 Closures.
11.6 Marking on packages.

AUTHORITY: The provisions of this Part 11 issued under R.S. 161, as amended, sec. 1, 62 Stat. 781, as amended; 5 U.S.C. 22, 18 U.S.C. 1716, 39 U.S.C. 501, 4058.

NOTE: The corresponding Postal Manual citation is Part 121.

HARVEY H. HANNAH,
Acting General Counsel.

§ 11.1 Adequacy of packaging standards.

(a) *Explanation.* This part contains standards and methods for packaging, wrapping, marking, and labeling articles for mailing. Part 15 of this chapter contains special packaging regulations for certain types of items that are excluded from the mail unless packaged so as to assure safe transit. Part 17 of this chapter contains special conditions governing parcels sent to military post offices overseas.

(b) *Inadequate preparation.* Articles which are not prepared in accordance with the general guides in this Part may be refused acceptance in the mail.

§ 11.2 Containers for mailing.

(a) *Types of containers.* Containers must be strong enough to retain and protect their contents during the course of normal mail handling. Boxes or cartons of the following materials are commonly used: Corrugated or solid fiberboard, kraftboard, chipboard (for small items), fiber mailing tubes with metal ends, metal, and wood. Heavy wrapping paper or burlap or similar cloth may be used for parcels containing unbreakable goods which would not be damaged by the weight of other mail. The strength of carton required will depend on the weight, size, and nature of the article shipped.

(b) *Size of container.* The outer shipping container should be the proper size to hold the goods shipped plus enough space for cushioning material inside. If the container is too large, the contents are apt to shift while in transit. If it is too small, or if too much is put into it, there will not be enough room for protective internal cushioning. An overstuffed carton may burst in transit.

(c) *Chipboard boxes.* Small rigid telescoping chipboard boxes are usually used for small articles such as watches, jewelry, pens, etc. Those boxes equipped with metal clasps which hold the two parts together ordinarily need no further reinforcement to effect a proper closure.

(d) *Used containers.* A used container as described in paragraph (a) of this section in good rigid condition with all flaps intact is acceptable. If a box of the desired size cannot be found, a larger one may be cut down as shown in Illustration 1. Bend the four sides over the articles which have been cushioned in the box. Illustration 1A shows a method of making an acceptable container by using two boxes of the same general dimensions from which the flaps have been removed.

ILLUSTRATION 1

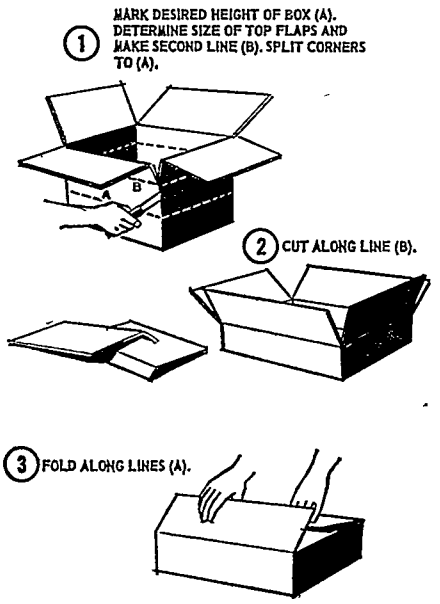
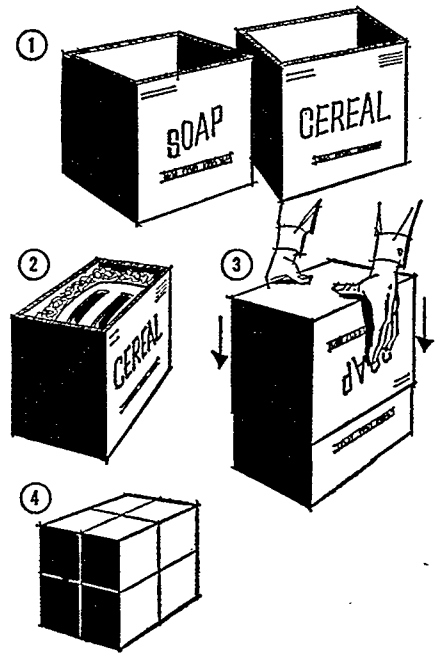


ILLUSTRATION 1A



(e) *Bulk mailings.* Envelopes should not ordinarily be used as containers for large numbers of items of merchandise mailed at the bulk third-class rates or at the single piece first-, third-, or fourth-class rates. Such items of merchandise should be placed in suitable containers which can be uniformly stacked and tied in bundles, and they should otherwise be properly packaged, labeled, and marked in accordance with the provisions of §§ 11.3, 11.4, 11.5, 11.6, and Part 15 of this chapter, just as though they were single pieces.

§ 11.3 Internal protection.

(a) *Purpose of cushioning.* (1) If a single item is shipped, sufficient cushioning material should surround the item so that it will be protected from outside impact against the carton in which it is shipped.

(2) If two or more items are shipped in the same carton or box, the cushioning should protect the items from damaging one another, in addition to protecting against outside impact. Each item should be separately wrapped so that no damage will result regardless of the position of the package inside a mail sack.

(3) In the absence of a specially engineered package with built-in interior padding, moulds or suspension, it is desirable that the container should always be full.

(b) *Cushioning materials and positioning.* (1) Excelsior, flexible corrugated fiberboard, or felt are commonly used to cushion heavy articles. Cellulose materials, cotton, clothing, shredded paper, or tissue paper are used for lighter items. Expanded foam plastics may also be used for cushioning or suspension of the items within the parcel. The amount and kind of cushioning needed will depend on size and nature of items mailed.

(2) Heavy and lightweight items should not be packed together in the same compartment. Heavy items should be packed so that they will remain in a fixed position.

(3) Heavy items such as machine parts, motors, castings, hardware and the like, particularly those in the long or bar category, require extraordinarily good exterior packaging and closure and should be securely positioned within the container. Positive measures should be taken to prevent punching out the ends of the containers. When items of the general type mentioned move in their containers, they will not be accepted for mailing. Strapping around the container and extra strengthening of the ends of long cartons are recommended.

(c) *Fragile articles.* (1) The pieces must be individually cushioned.

(2) If shredded paper or loose excelsior is used, at least 2 inches of either should be placed on all four sides of the box and on top and bottom. Each piece must be properly spaced and cushioned to avoid strain or damage to other pieces. About one-half of an inch cushioning between flat pieces will be adequate.

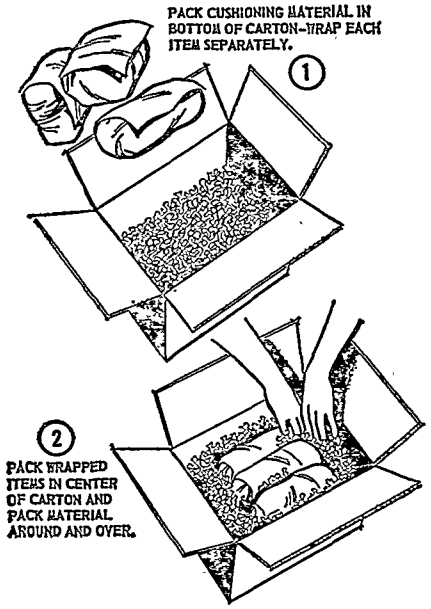
(3) Breakage of one item when packed with soft cushioning material may result in general loosening of other articles

in the carton with further damage. If corrugated interior packing, such as trays, pads, partitions, compartments, etc., are used, they must be arranged so that individual items do not touch the wall of the shipping carton or each other. Flexible packing pads between each item of the same size may be used in nesting.

(4) The weight of upper compartments should be borne by corrugated packing and not by articles in lower compartments.

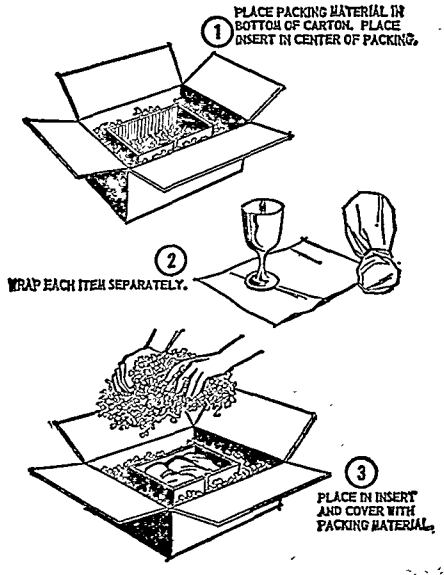
(5) Illustration 2 shows the manner of cushioning several odd shaped items in a parcel.

ILLUSTRATION 2



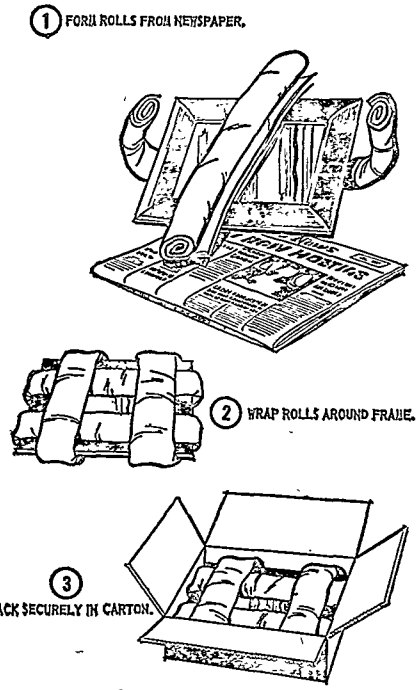
(d) *Glassware, chinaware, ceramics, radios, and other similar articles.* These articles are very fragile and require both a strong container and adequate interior cushioning between the pieces and the container. Proper packing is shown in Illustration 3.

ILLUSTRATION 3



(e) *Framed pictures.* These items should be cushioned on both sides and packed in a strong shipping carton. Illustration 4 shows one way of packing a framed picture. The newspaper is folded to form rolls which are placed around the picture.

ILLUSTRATION 4

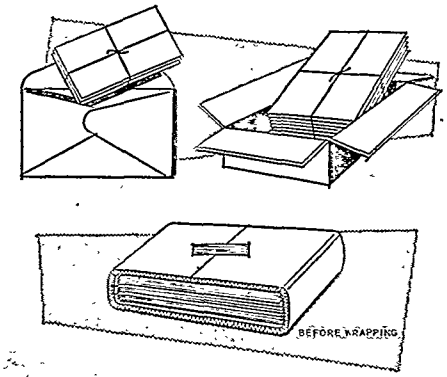


(f) *Pamphlets, forms, papers, etc.* These items are especially vulnerable to damage and should be securely packaged as illustrated below.

(1) *Boxes or cartons.* Use boxes or cartons for large quantities of loose paper items. Tie the items securely before placing them in the container.

(2) *Envelopes or wrappers.* Small quantities of loose paper items must be tied securely and protected by cardboard, corrugated board, or other material which will reinforce the edges and corners. Envelopes must be of durable quality, and paper wrappings should conform to the provisions of § 11.4.

ILLUSTRATION 5



§ 11.4 Outside wrapping.

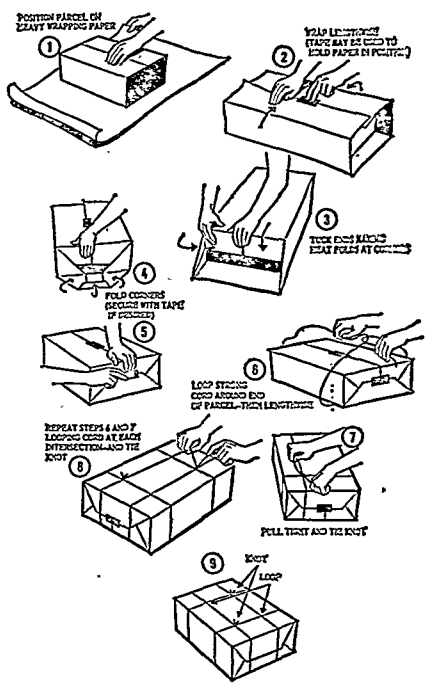
(a) Wrapping paper should be at least equal in quality and strength to the kraft stock used for grocery bags. Two or more thicknesses of flimsy wrapping paper will not compensate for lack of strength, since the address portion of such inferior packages can be more easily torn off or mutilated.

(b) Dry, nonfragile materials may be wrapped in heavy paper and tied with twine. Thin paper bags are not acceptable.

(c) Articles which are self-contained may be mailed without outside packaging or wrapping. The Post Office Department will not be responsible, however, if the surface or finish of the article becomes marred or damaged.

(d) Fiberboard cartons may be wrapped and tied with strong twine or rope as shown in Illustration 6. Although wrapping paper of good quality may be used as an outside cover for boxes, the tearing of the paper wrapper will often result in destruction of the name and address of the sender and addressee. It is preferable that outside paper wrappers be omitted if the box itself constitutes an adequate shipping container.

ILLUSTRATION 6



§ 11.5 Closures.

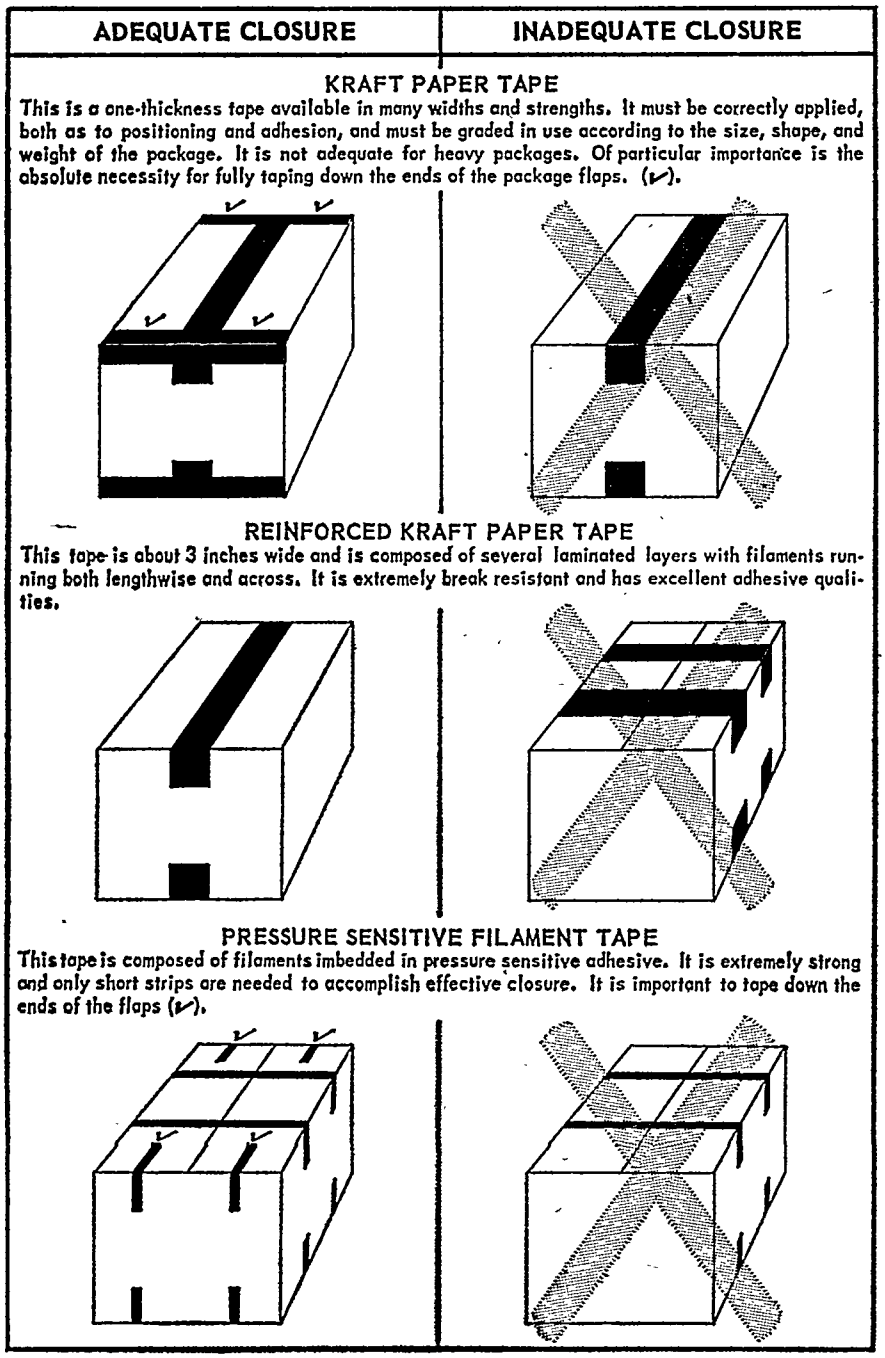
(a) *Tape.* Tapes used as closures must be of a durable type (60 pounds minimum) which will keep the parcels closed and intact during postal handling. Cellulose or masking tapes are not effective as the only closure. Tape manufacturers provide data concerning the type and strength of their tapes most suitable to specific needs. The needs vary considerably for different articles. The use of only one standard paper tape for all of the various articles mailed by any one mailer may result in inadequate closure of some parcels. When mailing

experience in individual cases indicates that paper tape does not provide an adequate closure for the articles being mailed, the use of reinforced tape is recommended.

(b) *Application.* Follow the illustrations shown to insure the most effective closure. If tape with water soluble adhesive is used the adhesive must be adequately moistened before application. Caution: Keep parcels closed with moistenable adhesive tape free from freezing temperatures for at least one hour following application of tape.

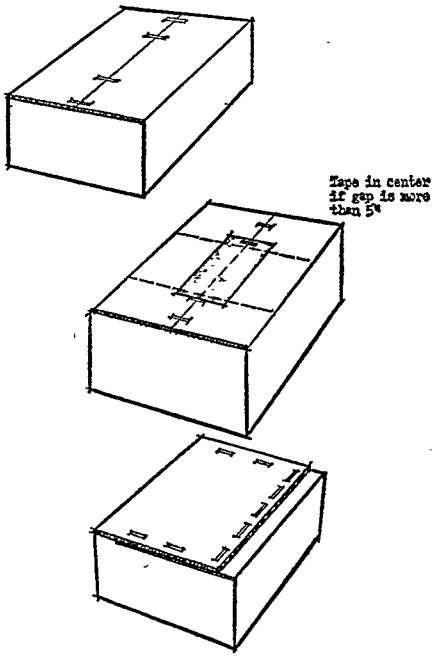
(c) *Tape illustrations.* Illustration 7 shows proper and improper methods of applying paper and reinforced tapes. These tapes can be used also to close other types of parcels not illustrated including those of irregular shapes, and soft wrapped. Parcels properly closed with reinforced tape are less vulnerable to failure than are parcels closed with unreinforced paper tape. The per foot cost of reinforced tape is greater but less tape is required and time is saved in the application.

ILLUSTRATION 7



(d) *Staple.* Too few staples result in ineffectual closures. Heavy parcels and those of unusual length should be strengthened with metal bands or reinforced tape applied around the middle. The ends of such parcels should also be reinforced. Illustration 8 shows various staple closures.

ILLUSTRATION 8



(e) *Twine.* Packages may be closed or additionally reinforced by securely tying with a strong twine. Ordinary light string should not be used. Twine should be knotted at several intersecting points to preclude loosening and loss in case of breakage of one or more segments of the twine. See Illustration 6 in § 11.4.

(f) *Glue.* When a glue closure is used, not less than 50 percent of the area of contact (carton flaps) must be glued firmly.

§ 11.6 Marking on packages.

(a) *Fragile.* Packages containing articles of a delicate nature such as glass, chinaware, electrical appliances, jewelry, musical instruments and radios, must be marked "Fragile" by the mailer.

(b) *Perishable.* Products which decay quickly, such as fresh meats, fresh fruits, and vegetables, must be marked "Perishable".

(c) *Conditional labeling.* (1) Words like "Do Not Bend" or "Do Not Fold or Crush" may be used only when content is fully protected with stiffening material.

(2) Words like "Rush" or "Do Not Delay" may be used only on packages intended for shipment as special delivery or special handling mail.

(d) *Unauthorized labeling.* (1) Labels and markings printed on cartons or on wrappers of parcels or on gummed tape on parcels are not permitted in place of any required label.

(2) Obsolete markings or labels shall be covered or obliterated.

(3) Parcels improperly labeled as to nature of contents are not acceptable.

[F.R. Doc. 65-10728; Filed, Oct. 7, 1965; 8:46 a.m.]

Title 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 1—RULES OF PRACTICE IN PATENT CASES

Miscellaneous Amendments

Certain amendments to the Rules of Practice in Patent Cases are hereby made for the purpose of conforming them to, and coordinating them with the changes effected by the enactment of Public Law 89-83 (79 Stat. 259, July 24, 1965), and to implement that law with respect to plant patents in color. Because of the nature and purpose of these changes, there has been no preliminary publication of proposed rules and the amended rules are to be effective October 25, 1965, the effective date of Public Law 89-83.

The text of the amended rules follows:

§ 1.21 Patent and miscellaneous fees and charges.

* * * * *

(c) For copies of plant patents in color	1.00
(d) For certified copies of patents in print:	
For specification and drawing, per copy	.50
For the certificate	1.00
For the grant	1.00

* * * * *

§ 1.24 Coupons.

Coupons in denominations of twenty cents and fifty cents are sold by the Patent Office for the convenience of regular purchasers of U.S. patents, designs, and trademark registrations; these coupons may not be used for any other purpose. The 20-cent coupons are sold individually and in pads of 10 for $2.00 and books of 50 with stubs for record for $10.00. The 50-cent coupons are sold individually and in pads of 10 for $5.00 and in books of 50 with stubs for record for $25.00. These coupons are good until used; they may be transferred but cannot be redeemed.

NOTE: Public document coupons issued by the Superintendent of Documents cannot be used in the Patent Office, nor can the coupons issued by the Patent Office be used at the Government Printing Office or elsewhere.

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents, and the general public in ordering services offered by the Office, copies of records, etc., special deposit accounts may be established in the Patent Office. A minimum deposit of $50.00 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit.

* * * * *

§ 1.311 Notice of allowance.

If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to him, his attorney or his agent, calling for the payment of a specified sum constituting the issue fee or a portion thereof, which shall be paid within 3 months from the date of the notice of allowance.

§ 1.313 Withdrawal from issue.

(a) After the notice of allowance of an application is sent, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the Office, a new notice of allowance will be sent if the application is again allowed.

(b) When the issue fee or that portion thereof specified in the notice of allowance has been paid, and the patent to be issued has received its date and number, the application will not be withdrawn from issue on account of any mistake or change of purpose of the applicant, his attorney or his agent, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the Office, or because of fraud or illegality in the application, or for interference. Express abandonment of the application (rule 138) may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

§ 1.314 Issuance of patent.

If payment of the issue fee or that portion thereof specified in the notice of allowance is timely made, the patent will issue in regular course.

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the fee specified in the notice of allowance is not paid within 3 months from the date of the notice the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent Office.

(b) If the issue fee or portion thereof specified in the notice of allowance is not timely paid but is submitted, with the fee for delayed payment, within 3 months of its due date with a verified showing of sufficient cause for the late payment, it may be accepted by the Commissioner as though no abandonment had ever occurred.

§ 1.317 Delayed payment of balance of the issue fee; lapsed patents.

Any remaining balance of the issue fee is to be paid within 3 months from the date of notice thereof and, if not paid, the patent lapses at the termination of the 3-month period. If this balance is not timely paid but is submitted, with the fee for delayed payment, within 3 months of its due date with a verified showing of sufficient cause for the late payment, it may be accepted by the Commissioner as though no lapse had ever occurred.

§ 1.155 Issue and term of design patents.

If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to him, his attorney, or his agent, calling for the payment of an issue fee in an appropriate amount dependent on the duration of the term desired by the applicant. If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned. If this fee is not timely paid but is submitted, with the fee for delayed payment, within 3 months of its due date with a verified showing of sufficient cause for the late payment, it may be accepted by the Commissioner as though no abandonment had ever occurred.

(Sec. 1, 66 Stat. 793, 35 U.S.C. 6; P.L. 89-83, 79 Stat. 259)

EDWIN L. REYNOLDS,
Acting Commissioner of Patents.

Approved: September 29, 1965.

J. HERBERT HOLLOMON,
Assistant Secretary for Science and Technology.

[F.R. Doc. 65-10716; Filed, Oct. 7, 1965; 8:45 a.m.]

Proposed Rule Making

FEDERAL AVIATION AGENCY

[14 CFR Part 39]

[Docket No. 6950]

AIRWORTHINESS DIRECTIVES

Martin Models 202, 202A, and 404 Airplanes

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Martin models 202, 202A, and 404 airplanes. Cracks have been found in the piston of the piston and fork assembly of the nose landing gear, on the subject airplanes, which could result in failure of the nose landing gear. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require inspection and repair or replacement of the piston and fork assembly, as necessary, on the subject airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before November 8, 1965, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

MARTIN. Applies to Models 202, 202A, and 404 airplanes.

Compliance required as indicated.

To detect and repair cracks in the piston of the piston and fork assembly of the nose landing gear, accomplish the following:

(a) For nose landing gear piston and fork assembly, P/N 202SD84483, with 6,000 or more hours' time in service as of the effective date of this AD, comply with paragraph (c) within the next 100 hours' time in service unless already accomplished within the 350 hours' time in service prior to the effective date of this AD, and thereafter at intervals not to exceed 450 hours' time in service from the last inspection.

(b) For nose landing gear piston and fork assembly, P/N 202SD84483, with less than 6,000 hours' time in service as of the effective date of this AD, comply with (c) prior to the accumulation of 6,100 hours' time in service unless accomplished in the 350 hours' time in service from 5,650 hours to 6,000 hours, and thereafter at intervals not to exceed 450 hours' time in service from the last inspection.

(c) Inspect for cracks around the periphery of the lower part of the piston from the hard chrome piston finish, to where the piston blends into the barrel (just above the fork junction) including the radii which blends the piston section into the barrel section of the terminal using dye penetrant with at least a 10-power glass or an equivalent FAA-approved method.

(d) If a crack is found, the piston and fork assembly must be repaired by grinding out the crack to a depth not to exceed 0.030 inch, or replaced with a part of the same part number, or an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region. The depth of material removable must be measured from the plane of the piston surface. The reworked area must be blended into the piston surface. The surface finish after grinding must be equivalent to RMS-32 with no tool marks present. One flight may be made in accordance with the provisions of FAR 21.197 for the purpose of obtaining these modifications.

NOTE: The length of grindout may be extended completely around the periphery of the piston surface.

(e) Repaired piston and fork assemblies must be inspected in accordance with (c) within 50 hours' time in service from the repair, and thereafter at intervals not to exceed 150 hours' time in service from the last inspection.

(f) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for such operator.

Issued in Washington, D.C., on September 30, 1965.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 65-10719; Filed, Oct. 7, 1965; 8:45 a.m.]

[14 CFR Part 39]

[Docket No. 6951]

AIRWORTHINESS DIRECTIVES

Vickers Viscount Model 810 Series Airplanes

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Vickers Viscount Model 810 Series airplanes. There has been an instance of overloading of the emergency inverter type 32EO1-2-A on the subject airplanes. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require replacement of the carbon pile voltage regulators AB5859 or 87792B with Bendix Corp. solid state voltage regulator 4B39-15 on Viscount Model 810 series airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before November 8, 1965, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

VICKERS. Applies to Viscount Model 810 Series airplanes.

Compliance required within the next 500 hours' time in service after the effective date of this AD unless already accomplished.

To prevent overloading of the emergency inverter type 32EO1-2-A in the event of main d.c. bus-bar failure, replace the carbon pile voltage regulators AB5859 or 877928 with Bendix Corp. solid state voltage regulator 4B39-15.

(British Aircraft Corp. (Operating) Ltd. (Weybridge Division), Modification Bulletin No. G. 2015 (810 Series) and later ARB-approved issues cover this subject.)

Issued in Washington, D.C., on September 29, 1965.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 65-10720; Filed, Oct. 7, 1965; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

BURLEY, FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, AND MARYLAND TOBACCO

Notice of Formulation of Amendments to Regulations Relating to Marketings of Tobacco and Records and Reports Incident Thereto

Notice is hereby given that, pursuant to the authority contained in the appli-

cable provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), amendments to the tobacco allotment and marketing quota regulations for the 1963–64 and subsequent marketing years (27 F.R. 8937, 9211, 10743; 28 F.R. 7757, 8018, 9144, 11049; 29 F.R. 1315, 6520, 7588, 7763, 9927, 12420, 14099, 14661; 30 F.R. 823, 6146, 7646, 9147, 10283) are under consideration. The amendments will affect the identification of tobacco for purposes of marketing restrictions and price support, and the records and reports incident thereto on the marketing of the 1965 and subsequent crops of burley, fire-cured, dark air-cured, Virginia sun-cured and Maryland tobacco.

Prior to the issuance of the amendments, data, views, or recommendations pertaining thereto which are submitted in writing to the Director, Farmer Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250, will be given consideration, if such submissions are postmarked not later than 10 days from the date of the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

The Department is considering changes and additions to the regulations as discussed below, also, definitions and other provisions would be clarified or modified to the extent necessary to give full force and effect to such changes and additions. The proposed changes would:

1. Provide for reporting nonwarehouse purchases of tobacco from producers by a warehouseman, for which the warehouseman prepares a warehouse bill (floor sheet), on Form MQ–80, Daily Auction Warehouse Report. Such purchases will not be required to be reported on Form MQ–79, Dealers Record.

2. Require, to insure each producer's tobacco being properly identified, that each basket of producer's tobacco placed on a warehouse floor be displayed on basket(s) separate from tobacco produced on any other farm and that each such basket be identified by the marketing card issued for the farm on which the tobacco was produced.

3. Provide for reporting on MQ–79, Dealer's Record, items in the Buyers Corrections Account including long weights and long baskets of producer's tobacco for which the producer has not been paid and which was not properly identified on his marketing card.

4. Provide for limiting the amount of tobacco which can be accumulated and considered as floor sweepings to the average of the most recent past three years for which data are available as reported by warehousemen. This limitation would be in terms of the percentage which floor sweepings were of total farm sales for such past years. It is anticipated that the limitation would be established for burley and Maryland tobacco at the same level, and that the limitation be the same for fire-cured, dark air-cured and Virginia sun-cured tobacco. Any floor sweepings marketed by warehousemen in excess of the limitation would be considered leaf account tobacco.

5. Provide for requiring reports by dealers and manufacturers of all purchases of tobacco acquired other than at auction to obtain a complete record of all marketings of resale tobacco.

6. Provide for requiring that the producer's marketing card number be entered on the warehouse bill (floor sheet) prior to the time his tobacco is offered for sale at auction.

7. Require that each warehouse bill (floor sheet) covering resale tobacco bear the correct name of the seller and be labeled "Resale".

8. Require dealers to furnish, on a daily basis, adjustment invoices to support items to be recorded in the warehouse Buyers Corrections Account, including tobacco received but not billed to them.

9. Require executed auction warehouse basket tickets to be filed by sale day to facilitate verification with other records.

Signed at Washington, D.C., on August 6, 1965.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 65–10819; Filed, Oct. 7, 1965; 11:19 a.m.]

Consumer and Marketing Service

[7 CFR Parts 1033, 1034]

[Docket Nos. AO–166–A30, AO–175–A21]

MILK IN GREATER CINCINNATI AND DAYTON-SPRINGFIELD, OHIO, MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Netherland-Hilton Hotel (South Hall Room), Fifth and Race Streets, Cincinnati, Ohio, beginning at 1 p.m. (local), on October 20, 1965, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Greater Cincinnati and Dayton-Springfield, Ohio, marketing areas.

The proposed amendment of the Class I price provisions of the Greater Cincinnati order (proposal number 1 below) warrants the consideration of comparable provisions under Order No. 34 (Dayton-Springfield) since the Class I pricing provisions of both orders include a common supply-demand formula which employs producer receipts and Class I utilization of the two markets. Such provisions of both orders therefore are hereby noticed for reconsideration or modification.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Kroger Co., United Dairy Farmers, and Cedar Hill Farms, Inc.:

Proposal No. 1. Revise § 1033.51(a) (Class I milk price—Cincinnati) by changing the words "a 'supply-demand adjustment' of not more than 50 cents" to read "a 'supply-demand adjustment' of not more than 20 cents."

Proposed by Dairy Division, Consumer and Marketing Service:

Proposal No. 2. Review the Class I pricing provisions of Order No. 34 (Dayton-Springfield) for appropriate modification in relation to any revisions resulting from proposal number 1, above.

Proposed by The Kroger Co.:

Proposal No. 3. Revise § 1033.15 to read as follows:

§ 1033.15 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, flavored milk, milk drink, cream, concentrated milk; and any mixture of milk, skim milk or cream (including fluid, frozen or semi-frozen malted milk and milk shake mixtures containing less than 15 percent total milk solids; and excluding frozen storage cream, sour or cultured cream, or non-cultured sour cream, aerated cream in dispensers, eggnog, ice cream and frozen dessert mixes, and evaporated and condensed milk).

Proposal No. 4. Revise § 1033.41(b)(1) (Class II milk) by changing the text following the words "cottage cheese," to read "eggnog, cultured mixtures of skim milk and butterfat, and non-cultured sour mixtures of skim milk and butterfat to which cheese or any food substance other than a milk product has been added in an amount equal to at least three percent of the finished product and which contains butterfat equal to not more than 15 percent of the finished product; and".

Proposed by The Cincinnati Milk Sales Association, Inc.:

Proposal No. 5. Revise § 1033.41 to read as follows:

§ 1033.41 Classes of utilization.

Subject to the conditions set forth in §§ 1033.43 and 1033.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, other than those classified pursuant to paragraph (b) (2) and (3) of this section, except that fluid milk products which have been fortified by the addition of milk solids shall be Class I only to the extent of the weight of an

equal volume of an unmodified fluid milk product of the same nature and butterfat content; and

(2) Not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Specifically accounted for as dumped, spilled or disposed of for animal feed;

(3) Disposed of in bulk as milk, skim milk, or cream to any commercial food processing establishment where food products are prepared only for consumption off of the premises;

(4) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1033.42(b)(1), but not in excess of two percent of such milk;

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1033.42(b)(2); and

(6) Specifically accounted for in inventories of fluid milk products at the end of the month.

Proposal No. 6. Amend § 1033.51 by revoking paragraph (c) and revising paragraph (b) to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II milk.* The price for Class II milk shall be the basic formula price for the current month as computed pursuant to the provisions of § 1033.50.

(c) [Revoked]

Proposal No. 7. Amend § 1033.52 by revoking paragraph (c) and revising paragraph (b) to read as follows:

§ 1033.52 Butterfat differentials to handlers.

* * * * *

(b) *Class II milk.* Multiply the Chicago butter price by 0.115.

(c) [Revoked]

Proposed by Sealtest Foods Division, National Dairy Products Corporation:

Proposal No. 8. Revise § 1033.15 (Fluid milk product) by changing the text following the words "frozen dessert mixes," to read "evaporated and condensed milk, and sterilized products packaged in hermetically sealed containers)."

Proposal No. 9. Revise § 1033.41(c)(1) (Class III milk) by changing the semicolon to a comma and adding "and sterilized products packaged in hermetically sealed containers;"

Proposed by Beatrice Foods Co.:

Proposal No. 10. Amend § 1033.41 (Classes of utilization) as follows:

A. In paragraph (a)(1) change the reference "paragraph (c) (2), (3), and (4)" to read "paragraph (b) (3), (4), and (5)";

B. Revise paragraphs (b) and (c) to read:

§ 1033.41 Classes of utilization.

* * * * *

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce ice cream, frozen desserts, ice cream and frozen dessert mixes (excluding malted milk or milk shake mixtures containing less than 15 percent total milk solids), milk or skim milk and cream mixtures disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, cultured mixtures of skim milk and butterfat to which cheese or any food substance other than a milk product has been added in an amount equal to at least three percent of the finished product and which contains butterfat equal to not more than 15 percent of the finished product, butter, frozen cream, spray and roller process nonfat dry milk solids, all cheese, and evaporated and condensed milk (or skim milk) in bulk;

(2) Inventories of fluid milk products;

(3) Specifically accounted for as dumped, spilled or disposed of for animal feed;

(4) Disposed of in bulk as milk, skim milk, or cream to any commercial food processing establishment where food products are prepared only for consumption off the premises;

(5) Skim milk contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to paragraph (a)(1) of this section;

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1033.42(b)(1), but not in excess of two percent of such milk; and

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1033.42(b)(2).

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat used to produce evaporated and condensed milk (or skim milk) in hermetically sealed cans.

Proposal No. 11. Amend § 1033.51 by revising paragraphs (b) and (c) to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II milk.* The price for Class II milk for the month shall be the basic formula price except that in no event shall such price exceed an amount computed from the sum of subparagraphs (1) and (2) of this paragraph rounded to the nearest cent, plus 10 cents:

(1) From the Chicago butter price, subtract 3.0 cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(2) From the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the United States Department of Agriculture, subtract 5.5 cents, multiply by 8.5 and then multiply by 0.965.

(c) *Class III milk.* The price for Class III milk shall be the simple average of the gross price per hundredweight for manufacturing grade milk, f.o.b. plants in Ohio, Kentucky, and Indiana, as reported by the U.S. Department of Agriculture for the preceding month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential of six cents per point, and rounded to the nearest full cent.

Proposal No. 12. Amend § 1033.52 by revising paragraphs (b) and (c) to read as follows:

§ 1033.52 Butterfat differentials to handlers.

* * * * *

(b) *Class II milk.* Multiply the Chicago butter price for the month by 0.115 and round to the nearest one-tenth cent; and

(c) *Class III milk.* The rate shall be 6 cents per point.

Proposal No. 13. In § 1033.53(a) (Location differentials to handlers) change the 30 mile distance to 120 miles, and change the schedule included therein to read: "120 miles but less than 130 miles, 10 cents; for each additional 10 miles or fraction thereof, an additional 1.5 cents."

Proposed by Cedar Hill Farms, Inc.:

Proposal No. 14. A. Revise § 1033.41 (a)(1) (Class I milk) by substituting a comma for the semicolon following the word "content" and adding "and except milk, skim milk or cream used in the manufacture of a non-dairy product and except sterilized milk products packaged in hermetically sealed containers purchased for sale and distribution; and".

B. Revise § 1033.41(c)(1) (Class III milk) by substituting a comma for the semicolon and adding the phrase "a non-dairy product, and sterilized milk products packaged in hermetically sealed containers;".

Proposed by the Dairy Division, Consumer and Marketing Service:

Proposal No. 15. Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from offices of the Market Administrator, 519 Main Street, Cincinnati, Ohio, 45201 and 434 Third National Bank Building, Dayton, Ohio, 45402, or from the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C., 20250, or may be there inspected.

Signed at Washington, D.C., on October 5, 1965.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 65-10739; Filed, Oct. 7, 1965; 8:47 a.m.]

[7 CFR Parts 1073, 1074]

[Docket Nos. AO-173-A17, AO-249-A7]

MILK IN WICHITA, KANS., AND SOUTHWEST KANSAS MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation

of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Aviation Room, Allis Hotel, 200 South Broadway, Wichita, Kans., beginning at 10 a.m., local time, on November 16, 1965, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Wichita, Kans., and Southwest Kansas marketing areas.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposal relative to a redefinition of the marketing area raises the issue whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate.

A proposal to combine under one order the Wichita, Kans., and Southwest Kansas marketing areas along with additional territory contemplates termination of the Southwest Kansas Order No. 74 with a merger of the administrative and marketing service funds. This proposal also raises the issue of whether the present provisions of either the Wichita, Kans., or Southwest Kansas orders, if amended in accordance with the proposals listed below, would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of either of the orders would be appropriate.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Southwest Milk Producers Association:

Proposal No. 1. Combine under one order the Wichita, Kans., and Southwest Kansas marketing areas and additional territory as proposed. Merge the administrative, marketing service and producer-settlement funds and make such conforming changes as are necessary to integrate the two orders.

The complete regulatory terms for said consolidated order are proposed as follows:

DEFINITIONS

§ 1073.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1073.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1073.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1073.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1073.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 1073.6 Wichita, Kans., marketing area.

"Wichita, Kans., marketing area" hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

Zone I: Barber, Barton, Butler, Comanche, Cowley, Edwards, Ellis, Ellsworth, Harper, Harvey, Kingman, Kiowa, Lincoln, Marion, McPherson, Osborne, Pawnee, Pratt, Reno, Rice, Rooks, Rush, Russell, Sedgwick, Stafford, and Sumner.

Zone II: Clark, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearny, Lane, Meade, Morton, Ness, Scott, Seward, Sheridan, Stanton, Stevens, Trego, and Wichita.

§ 1073.7 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority or produces milk acceptable to agencies of the U.S. Government for fluid consumption in its institutions or bases in the marketing area and whose milk is:

(a) Received at a pool plant; or

(b) Diverted as producer milk pursuant to § 1073.14.

§ 1073.8 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates a partially regulated distributing plant;

(c) Any cooperative association with respect to milk of its member producers which is diverted from a pool plant to a nonpool plant for the account of such association;

(d) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered; and

(e) A producer-handler, or any person who operates an other order plant described in § 1073.61.

§ 1073.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) Receipts of fluid milk products at his plant are from his own production, from pool plants of other handlers, from a cooperative association pursuant to § 1073.8(d) and packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1073.10 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which during the month route disposition is made in the marketing area.

§ 1073.11 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to an appropriate health authority for distribution in the marketing area under a Grade A label are shipped during the month to a pool plant qualified pursuant to § 1073.12.

§ 1073.12 Pool plant.

"Pool plant" means:

(a) Any distributing plant, other than that of a producer-handler or one described in § 1073.61, which:

(1) During any of the months of March through July disposes of as Class I milk an amount equal to 25 percent or more of such plant's total receipts of Grade A milk direct from dairy farmers, qualified to become producers (as defined in § 1073.7), supply plants and cooperative associations in their capacity as a handler pursuant to § 1073.8(d) and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts;

(2) During any of the other months disposes of as Class I milk an amount equal to 35 percent or more of such receipts and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts;

(3) Transfers milk as Class I milk to another such plant, for the purposes of subparagraphs (1) and (2) of this paragraph, shall be credited as Class I milk disposition as follows:

(i) Except as provided in subdivision (ii) of this subparagraph, milk so transferred will be credited as a Class I milk disposition of the transferring plant only

to the extent that the classification as Class I milk is required pursuant to § 1073.44(a) (2); and

(ii) In any case in which the entire quantity of Class I milk disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; and

(4) Qualifies as a pool plant as described in subparagraphs (1) and (2) of this paragraph during any month shall be a pool plant during the following month;

(b) Any supply plant from which during the month not less than 50 percent of the Grade A milk received from dairy farmers qualified to become producers and cooperative associations in their capacity as a handler pursuant to § 1073.8 (d) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of August through November shall be designated a pool plant in each of the following months of December through July unless the plant operator requests the market administrator in writing that such plant shall not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) Any plant(s) which is operated by a cooperative association and 60 percent or more of the milk delivered during the current month by producers who are members of such association is delivered directly or is transferred by the association to pool plants as described in paragraphs (a) and (b) of this section, unless such a plant qualifies for the month as a "pool plant" under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants which qualified as "pool plants" under such other order.

§ 1073.13 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition of fluid milk products labeled Grade A in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant.

§ 1073.14 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in the following milk from producers:

(a) With respect to the operations of a pool plant:

(1) Received directly from such producers;

(2) Diverted by the operator of such pool plant to a nonpool plant, subject to the condition of paragraph (c) of this section; and

(3) Which is to be classified pursuant to § 1073.44(g);

(b) With respect to receipts by a cooperative association in addition to those pursuant to paragraph (a) of this section:

(1) For which such cooperative association is the handler pursuant to § 1073.8(c), subject to the condition of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1073.8(d); and

(c) For the purposes of location adjustments pursuant to §§ 1073.53 and 1073.82, milk diverted shall be priced at the location of the nonpool plant to which diverted.

§ 1073.15 Other source milk.

"Other source milk" means all the skim milk and butterfat contained in:

(a) Receipts of fluid milk products and cottage cheese during the month except:

(1) Fluid milk products and cottage cheese received from pool plants; or

(2) Producer milk; and

(b) Products, other than fluid milk products and cottage cheese, from any source (including those products at the plant) which are reprocessed or converted to another product in the plant during the month and any disappearance of nonfluid milk products not otherwise accounted for.

§ 1073.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored) unmodified or "fortified", including "dietary milk products" and reconstituted milk or skim milk, cream, cultured or sour cream or any mixture in fluid form of milk or skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog and sterilized products packaged in hermetically sealed containers).

§ 1073.17 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a distributing plant to a retail or wholesale outlet (including any delivery by a vendor, from a plant store or through a vending machine) except any bulk delivery of a fluid milk product to any milk processing plant, or pursuant to § 1073.41 (c) (4).

§ 1073.18 Chicago butter price.

"Chicago butter price" means the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 1073.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at, the discretion of the Secretary.

§ 1073.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend to the Secretary amendments thereto.

§ 1073.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date upon which he enters upon his duties execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in the amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of funds provided by § 1073.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 1073.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part and surrender the same to his successor or to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) Publicly announce at his discretion, unless otherwise directed by the

Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who within 10 days after the date upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 1073.30 through 1073.32; or

(2) Made payments pursuant to §§ 1073.80 through 1073.88;

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate and mail to each handler at his last known address the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk computed pursuant to § 1073.51(a) and the Class I butterfat differential pursuant to § 1073.52(a) both for the current month; and the minimum prices for Class II and Class III milk computed pursuant to § 1073.51 (b) and (c), and the Class II and Class III butterfat differentials pursuant to § 1073.52 (b) and (c), all for the previous month;

(2) On or before the 12th day of each month the uniform price computed pursuant to § 1073.71 and the butterfat differential computed pursuant to § 1073.81 both for the previous month;

(j) Prepare and make available for the benefit of producers, consumers, and handlers such general statistics and such information concerning the operations hereof as are appropriate to the purpose and functioning of this part and which do not reveal confidential information;

(k) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers in each class by each handler who in the previous month received milk from members of such cooperative association;

(l) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1073.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

RECORDS, REPORTS AND FACILITIES

§ 1073.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, reports for such month shall be made to the market administrator in the detail and on forms prescribed by the market administrator:

(a) Each handler described in § 1073.8 (a) shall report with respect to each of his pool plants as follows:

(1) Receipts of skim milk and butterfat in:

(i) Producer milk;

(ii) Fluid milk products received from other pool plants; and

(iii) Other source milk, with the identity of each source;

(2) Opening inventories of fluid milk products;

(3) The utilization or disposition of all quantities required to be reported, including separate statements of quantities:

(i) In inventories of fluid milk products on hand in bulk and in packages at the beginning and at the end of the month; and

(ii) In disposition of fluid milk products on routes in the marketing area; and

(4) Such other information with respect to receipts and utilization as the market administrator may request;

(b) Each handler described in § 1073.8(b) shall report as required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of those of producer milk; and

(c) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1073.8 (c) and (d), as follows:

(1) Receipts of skim milk and butterfat in producer milk;

(2) Utilization of milk for which it is the handler pursuant to § 1073.8(c);

(3) The quantities delivered to each pool plant of another handler pursuant to § 1073.8(d); and

(4) Such other information as the market administrator may require.

§ 1073.31 Payroll reports.

On or before the 20th day after the end of the month each handler described in § 1073.8(a), for each of his pool plants, and each cooperative association with respect to milk for which it is the handler pursuant to § 1073.8 (c) and (d) shall submit to the market administrator the producer payroll and each handler making payments pursuant to § 1073.62(a) his payroll for dairy farmers delivering Grade A milk, which shall show for each producer or dairy farmer:

(a) The name and address;

(b) The total pounds of milk received and the average butterfat content thereof;

(c) The total pounds of milk diverted and the location of the nonpool plant; and

(d) The price, amount, and date of payment with the nature and amount of any deductions.

§ 1073.32 Other reports.

Each producer-handler and each handler exempt from regulation pursuant to § 1073.61 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

§ 1073.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all fluid milk products on hand at the beginning and end of each month.

§ 1073.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such 3-year period, the market administrator notified the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act, or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1073.40 Skim milk and butterfat to be classified.

All skim milk and butterfat required to be reported pursuant to § 1073.30 shall be classified by the market administrator pursuant to the provisions of §§ 1073.41 through 1073.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1073.41 Classes of utilization.

Subject to the conditions set forth in §§ 1073.43 through 1073.46 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product (including those reconstituted) except:

(i) Any fluid milk product fortified with added solids shall be Class I milk in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content; and

(ii) Any fluid milk product classified pursuant to subparagraphs (2), (3), and (4) of paragraph (c) of this section;

(2) In inventory of fluid milk products in packaged form on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk or as Class III milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat used to produce cottage cheese, except as classified pursuant to subparagraphs (2) and (3) of paragraph (c) of this section; and

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product or cottage cheese;

(2) In fluid milk products or cottage cheese disposed of for livestock feed, if the conditions of § 1073.30(a)(4) are met;

(3) In fluid milk products or cottage cheese dumped after notification to and opportunity for verification as may be requested by the market administrator;

(4) Disposed of in fluid milk products in bulk form to any commercial food processing establishment for use in food products prepared for consumption off the premises;

(5) Used to produce frozen cream;

(6) In inventory of bulk fluid milk products on hand at the end of the month;

(7) In that portion of "fortified" fluid milk products not classified as Class I milk pursuant to paragraph (a)(1)(i) of this section;

(8) In shrinkage of skim milk and butterfat, respectively, assigned at each pool plant pursuant to § 1073.42(b)(1), but not to exceed the following:

(i) Two percent of milk received directly from producers, excluding milk diverted pursuant to § 1073.14; plus

(ii) 1.5 percent of milk received in bulk tank lots from other pool plants; plus

(iii) 1.5 percent of milk received from a cooperative association which is a handler for such milk pursuant to § 1073.8(d), except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be two percent; plus

(iv) 1.5 percent of skim milk and butterfat, respectively, received in bulk tank lots from an other order plant, exclusive of the quantity for which Class III milk (or Class II milk) utilization was requested by the operator of such plant and the handler; plus

(v) 1.5 percent of the skim milk and butterfat, respectively, received in bulk tank lots from unregulated supply plants, exclusive of the quantity for which Class III milk (or Class II milk) utilization was requested by the handler; less

(vi) 1.5 percent of milk disposed of in bulk tank lots to other milk plants;

(9) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1073.42(b)(2); and

(10) In shrinkage of skim milk and butterfat, respectively, in milk for which a cooperative association is the handler pursuant to § 1073.8(d), and for which the exception stated in subparagraph (8)(iii) of this paragraph does not apply, but not in excess of one-half percent of the total in such milk.

§ 1073.42 Assignment of shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler at each plant; and

(b) If the pool plant has receipts of other source milk, shrinkage shall be prorated between:

(1) Skim milk and butterfat in amounts respectively equal to 50 times the maximum amount that may be computed pursuant to § 1073.41(c)(8); and

(2) Skim milk and butterfat in other source milk in the form of fluid milk products exclusive of that specified in § 1073.41(c)(8).

§ 1073.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise; and

(b) For the purposes of §§ 1073.41, 1073.42, 1073.44 through 1073.46, 1073.50 through 1073.54, and 1073.70 through 1073.72, milk delivered by a cooperative association in its capacity as a handler pursuant to § 1073.8 (a) and (d) shall be classified and allocated as producer milk according to the use or disposition by the receiving handler and the value thereof at class prices shall be included in the receiving handler's net pool obligation pursuant to § 1073.70. For purposes of location adjustments pursuant to § 1073.53 and administrative expense pursuant to § 1073.88, such milk shall be treated as producer milk of the receiving handler.

(c) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1073.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization mutually indicated in writing on or before the seventh day after the end of the month in which such transaction occurred by the operators of both plants, otherwise as Class I milk, if transferred from a pool plant to another pool plant, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to any class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1073.46(a)(4) and the corresponding step of § 1073.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I (then Class II) utilization to such other source milk; and

(3) If the handler transferring to the pool plant of another handler received during the month other source milk to be allocated pursuant to § 1073.46(a)(8) or (9) and the corresponding steps of § 1073.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I (or Class II) milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located more than 250 miles, by the shortest highway distance as determined by the market administrator, from the pool plant from which transferred or diverted, except that cream so transferred may be classified as Class III milk if prior notice is given to the market administrator and each container is labeled by the transferor as "Grade C" cream or manufacturing only;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, located not more than 250 miles, by the shortest highway distance as determined by the market administrator from the pool plant from which transferred or diverted, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1073.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I milk utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I milk utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I milk utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I milk utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I milk utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk to the extent of such uses at the plant and then as Class III milk;

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2) or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in Class I milk if allocated as a fluid milk product under the other order to Class I milk and in Class III milk if not allocated to Class I milk (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plant so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class III milk to the extent of the Class III milk utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I milk subject to adjustment when such information is available;

(5) For purposes of this paragraph (e), if the transferee order provides for only two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and milk allocated to another class shall be classified as Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1073.41;

(f) If any skim milk or butterfat is transferred to a second plant under paragraph (d) of this section the same conditions of audit, classification, and allocation shall apply; and

(g) As producer milk in the transferee plant, if transferred as bulk milk to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1073.8(d). Such milk shall be excluded from producer milk to be classified as that of the cooperative association.

§ 1073.45 Computation of skim milk and butterfat in each class.

(a) For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1073.30 for each pool plant of each handler;

(b) If no fluid milk products to be assigned pursuant to § 1073.46(a) (8) or (9) were received at any pool plant of the handler, and the handler so requests, allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70 shall be made separately for each pool plant of a handler operating two or more pool plants;

(c) Unless the conditions specified in paragraph (b) of this section apply, the market administrator will compute the pounds of skim milk and butterfat in each class at all pool plants of such handler, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70 shall be based upon the combined utilization so computed; and

(d) Producer milk for which a cooperative association is the responsible handler pursuant to § 1073.8 (c) or (d) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purposes of allocation pursuant to § 1073.46 and computation of obligation pursuant to § 1073.70.

§ 1073.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1073.45, the market administrator shall determine the classification of producer milk for each handler (or pool plant, if applicable) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk classified as Class III milk pursuant to § 1073.41(c)(8);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class III milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Except for the first month this order is effective, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III milk, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(5) Subtract, in the order specified below, in sequence beginning with Class III from the pounds of skim milk remaining in Class II and III milk but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant:

(*a*) For which the handler requests Class III or Class II milk utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool plants and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class III or Class II milk utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory of bulk fluid milk products (and, for the first month the order is effective the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (5)(i) of this paragraph.

(9) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to subparagraph (5) (ii) of this paragraph:

(i) In series beginning with Class III milk, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III milk utilization of skim milk announced for the month by the market administrator pursuant to § 1073.22(l) or the percentage that Class II and Class III milk utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I milk, the remaining pounds of such receipts;

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other handlers (or other pool plants, if applicable) according to the classification assigned pursuant to § 1073.44(a); and

(11) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1073.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

§ 1073.51 Class prices.

Subject to the provisions of §§ 1073.52 and 1073.53, the minimum prices per hundredweight to be paid by each handler for milk received at his plant during the month shall be as follows:

(a) *Class I milk.* The price per hundredweight shall be the basic formula price for the preceding month plus $1.60 for pool plants located in Zone I; and plus 10 cents more in Zone II. To the zone prices there shall be added or subtracted a supply-demand adjustment computed as follows: *Provided,* That the Class I price so computed shall not be less than the Class I price for milk containing 3.5 percent butterfat for the same period pursuant to Federal Order No. 64 (Greater Kansas City) during each month of the period July through March and plus 10 cents for each of the months of April through June, nor more than the Kansas City Class I price (3.5 percent butterfat content) plus 50 cents during each of the months of the period July through March and plus 60 cents for each of the months of April through June.

(1) Divide the total receipts of milk from producers in the second and third months preceding by the total volume of Class I milk at pool plants (excluding interhandler transfers) for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage";

(2) Compute a "net deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the net deviation percentage is zero;

(ii) Any amount by which the current utilizaiton percentage is less than the minimum standard utilization percentage specified below is a "minus net deviation percentage"; and

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus net deviation percentage":

Delivery period for which price applies	Delivery period used in computation	Percentages	
		Minimum	Maximum
January	October–November	130	140
February	November–December	126	136
March	December–January	125	135
April	January–February	124	134
May	February–March	125	135
June	March–April	125	135
July	April–May	132	142
August	May–June	136	146
September	June–July	143	153
October	July–August	137	147
November	August–September	131	141
December	September–October	131	141

(3) For a minus "net deviation percentage" the Class I price shall be increased and for a plus "net deviation percentage" the Class I price shall be decreased as follows:

(i) One-half cent times each such percentage point of net deviation; plus

(ii) One-half cent times the lesser of:

(*a*) Each such percentage point of net deviation; or

(*b*) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus

(iii) One-half cent times the least of:

(*a*) Each such percentage point of net deviation;

(*b*) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; or

(*c*) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month.

(iv) Less one-half cent, if necessary, to round down to the nearest whole cent.

(b) *Class II milk.* The price per hundredweight shall be the Class III milk price for the month, plus 15 cents; and

(c) *Class III milk.* The basic formula price for the month, except that the price for milk used in the manufacture of butter and nonfat dry milk shall be 15 cents less for all months, subject to the following limitations:

(1) For the purpose of computing the Class III price credit, the volume of milk used in a pool plant for the manufacture of butter, and nonfat dry milk shall be reduced by the volume of milk received from other handlers under this order or any other order, on which a similar price credit has been allowed.

(2) Milk used in the manufacture of butter and nonfat dry milk within a nonpool plant which has received milk from a handler(s) regulated under this order or any other order which permits a similar price credit, shall be prorated among such handlers, for the purpose of determining the amount of price credit to be allowed such handlers.

§ 1073.52 Handler butterfat differential.

If the average butterfat test of Class I, Class II, or Class III milk as calculated pursuant to § 1073.46 is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential computed by multiplying the Chicago butter price for the month by the applicable factor listed below, and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.115;

(b) *Class II milk.* Multiply such price for the current month by 0.115; and

(c) *Class III milk.* Multiply such price for the current month by 0.115.

§ 1073.53 Location differentials to handlers.

(a) For that milk received from producers (including that from a cooperative association in its capacity as a handler pursuant to § 1073.8(d)) at a pool plant (or diverted to a nonpool plant) located outside the marketing area and 70 miles or more from the City Hall in Dodge City, Hays, Garden City, Pratt, McPherson or Wichita, Kans., whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk or is assigned Class I location adjustment credit pursuant to paragraph (b) of this section, or for other source milk for which a location adjustment is applicable pursuant to § 1073.70, the price specified in § 1073.51 for the zone in which such city is located

shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

Distance from City Hall:	*Rate per hundredweight (cents)*
70 miles but less than 80 miles	12.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee plant which is in excess of the sum of receipts at such plant from producers and cooperative associations pursuant to § 1073.8(d), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which the highest Class I price is applicable and then in sequence beginning with the plant at which the next highest price would apply.

§ 1073.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1073.60 Producer-handlers.

Sections 1073.40 through 1073.46, 1073.50 through 1073.54, 1073.61, 1073.62, 1073.70 through 1073.72, and 1073.80 through 1073.89 shall not apply to a producer-handler.

§ 1073.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except that the operator shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) A distributing plant meeting the requirements of § 1073.12(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, had a greater quantity of route disposition during the month in such other Federal order marketing area than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(b) A distributing plant meeting the requirements of § 1073.12(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, had a greater quantity of route disposition during the month in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(c) A supply plant meeting the requirements of § 1073.12(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of December through July if such plant retains automatic pooling status under this part.

§ 1073.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1073.30 and 1073.31 the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1073.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1073.70(g) and a credit in the amount specified in § 1073.84(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph;

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1073.30 and 1073.31 similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1073.12(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant; and

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I milk price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III milk price).

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 1073.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler (at each pool plant, if applicable) including a cooperative association pursuant to § 1073.45(d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1073.46(c), by the applicable class prices (adjusted pursuant to §§ 1073.52 and 1073.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1073.46(a)(11) and the corresponding step of § 1073.46(b) by the applicable class prices;

(c) Add the amount obtained by multiplying the difference between the Class III milk price for the preceding month and the Class I milk price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1073.46(a)(6) and the corresponding step of § 1073.46(b);

(d) Add the amount obtained from multiplying the difference between the Class III milk price for the preceding month and the Class II milk price for the current month by the lesser of:

(1) The hundredweight of skim milk and butterfat subtracted from Class II

milk pursuant to § 1073.46(a)(6) and the corresponding step of § 1073.46(b) for the current month; or

(2) The hundredweight of skim milk and butterfat remaining in Class III milk after the calculations pursuant to § 1073.46(a)(9) and the corresponding step of § 1073.46(b) for the preceding month, less the hundredweight used in computations pursuant to paragraph (c) of this section;

(e) Multiply the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.46(a)(3) and the corresponding step of § 1073.46(b). If the Class I price for the current month is less than the Class I price for the preceding month the result shall be a minus amount.

(f) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1073.46(a)(4) and the corresponding step of § 1073.46(b); and

(g) Add an amount equal to the value at the Class I milk price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I milk pursuant to § 1073.46(a)(8) and the corresponding step of § 1073.46(b).

§ 1073.71 Computation of uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.70 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to §§ 1073.80 and 1073.84 for the preceding month;

(b) Deduct the amount of the plus differentials and add the amount of the minus differentials, which are applicable pursuant to § 1073.82;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1073.81 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1073.70(g);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) From the remainder subtract during each of the months of April, May, and June, an amount equal to 20 cents per hundredweight of the total amount of producer milk to be retained in the producer-settlement fund for the purpose specified in § 1073.85(b);

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1073.72 Notification of handlers.

On or before the 12th day of each month the market administrator shall notify each handler of:

(a) The quantity and value of his milk in each class computed pursuant to §§ 1073.46 and 1073.70 and the totals of such quantities and values;

(b) The uniform price computed pursuant to § 1073.71;

(c) The amount, if any, due such handler from the producer-settlement fund;

(d) The total amounts to be paid by such handler pursuant to §§ 1073.80 and 1073.84; and

(e) The amount to be paid by such handler pursuant to §§ 1073.87 and 1073.88.

§ 1073.73 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to § 1073.84, § 1073.86(a), § 1073.87(a), or § 1073.88 shall be increased one-half of one percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

PAYMENTS

§ 1073.80 Time and method of payment.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform prices computed pursuant to § 1073.71 for such producers' deliveries of milk, respectively, adjusted by the butterfat and location differentials computed pursuant to §§ 1073.81 and 1073.82, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1073.85, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(2) Who is still delivering Grade A milk to such handler, an advance payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk for which a cooperative association is the handler pursuant to § 1073.8(d), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) An advance payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price, less payment made pursuant to subparagraph (1) of this paragraph.

§ 1073.81 Butterfat differentials to producers.

In making payments pursuant to § 1073.80(a), the uniform prices per hundredweight shall be adjusted for each one-tenth of one percent that the average butterfat content is above or below 3.5 percent by a butterfat differential equal to the butterfat differentials determined pursuant to § 1073.52, rounded to the nearest tenth of a cent.

§ 1073.32 Location differentials to producers and on nonpool milk.

The uniform price to producers shall be announced for milk received at pool plants located in the Zone I and the price for milk received at pool plants at all other locations shall be adjusted as follows:

(a) At plants located in the Zone II, the price shall be increased 10 cents per hundredweight;

(b) At plants located outside of the marketing area and 70 miles but less than 80 miles from the nearest city hall specified below, the price shall be reduced as follows:

City Hall	Rate per hundredweight (cents)
Hays, McPherson, Pratt, and Wichita	12
Garden City and Dodeg City	2

(c) The price at plants located more than 79 miles from the above specified locations shall be reduced by an additional 1.5 cents per hundredweight for each additional 10 miles or fraction thereof; and

(d) For purposes of computations pursuant to §§ 1073.84 and 1073.85, the weighted average price shall be reduced at the rates set forth in paragraph (a) or (b) of this section applicable at the location at the nonpool plant(s) from which the milk was received.

§ 1073.33 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.62, 1073.84, and 1073.86, and out of which he shall make all payments to handlers pursuant to §§ 1073.85 and 1073.86. Immediately after computing the uniform prices for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 1073.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

§ 1073.34 Payments to the producer-settlement fund.

On or before the 13th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts for each pool plant if applicable specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The sum of:

(1) The total of the net pool obligation computed pursuant to § 1073.70 for such handler; and

(2) In the case of cooperative association which is a handler, the minimum amounts due from other handlers pursuant to § 1073.80(d)(2); and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1073.80; and

(2) The value at the uniform price(s) applicable at the location of the plant(s) from which received (not to be less than the value at the Class III milk price) with respect to other source milk for which a value is computed pursuant to § 1073.70(g).

§ 1073.35 Payments out of the producer-settlement fund.

(a) On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount for each pool plant if applicable, if any, by which the amount computed pursuant to § 1073.84(b) exceeds the amount computed pursuant to § 1073.84(a). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) On or before the 14th day after the end of each of the months of September, October, and November, the market administrator shall pay out of the producer-settlement fund to each handler for milk for which payment is to be made pursuant to § 1073.80(a) for such month and to the cooperative association for all producer milk for which such association is receiving payments pursuant to § 1073.80(c) an amount computed as follows:

(1) Divide one-third of the total amount held pursuant to § 1073.71(h) by the total hundredweight of producer milk received by all pool handlers during the month and multiply the resulting amount (computed to the nearest cent per hundredweight) by the hundredweight of milk received from each such producer during the month.

§ 1073.36 Adjustment of errors in payments.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1073.85, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time for making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that, solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.80, no handler shall be deemed to be in violation of § 1073.80 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1073.37 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.80(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.80(a) as are authorized by such producers, and, on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

§ 1073.38 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified pursuant to § 1073.44(g)) and such handler's own production;

(b) Other source milk allocated to Class I milk pursuant to § 1073.46(a)(4) and (8) and the corresponding steps of § 1073.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant with route disposition in the marketing area that exceeds Class I milk received

during the month at such plant from pool plants and other order plants.

§ 1073.89 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 1073.90 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1073.91.

§ 1073.91 Suspension or termination.

Any or all of the provisions of this part, or any amendment to this part, may be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary shall give and shall, in any event, terminate whenever the provisions of the Act cease to be in effect.

§ 1073.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all provisions of this part there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate;

(b) The market administrator or such other person as the Secretary may designate, shall:

(1) Continue in such capacity until removed;

(2) From time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and

(3) If so directed by the Secretary, execute assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 1073.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 1073.94 Agents.

The Secretary may by designation, in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1073.95 Separability of provisions.

If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Proposed by the Borden Company:

Proposal No. 2. Define "Fluid milk product" (§ 1073.15 of the present order, or § 1073.16 of Proposal No. 1) as follows:

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, yogurt, milk drinks (plain or flavored), unmodified or "fortified", including "dietary milk products" and reconstituted milk or skim milk, cream, cultured or sour cream (except cultured sour cream mixtures to which cheese or any food substance other than a milk product has been added in an amount not less than three percent by weight of finished product), or any mixture in fluid form of milk, skim milk and cream (except frozen or aerated cream, ice cream or frozen dessert mixes, eggnog and sterilized products packaged in hermetically sealed containers).

Proposal No. 3. A. Amend § 1073.41 (b) to read as follows:

(b) Class II milk shall be all skim milk and butterfat used to produce cottage cheese: *Provided,* That Class II classification shall not include the weight of water associated with nonfat milk solids (as computed pursuant to § 1073.40) used to fortify milk products used to produce cottage cheese, and except as classified pursuant to subparagraphs (3) and (4) of paragraph (c) of this section.

B. Amend § 1073.41(c) to read as follows:

Class III shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product or cottage cheese;

(2) Used for starter churning, wholesale baking, candy making of any other commercial food processing establishment for use in food products prepared for consumption off the premises;

(3) In fluid milk products or cottage cheese disposed of for livestock feed;

(4) In fluid milk products or cottage cheese dumped after notification and opportunity for verification as may be requested by the market administrator;

(5) Used to produce frozen or aerated cream;

(6) In that portion of "fortified" fluid milk products not classified as Class I pursuant to paragraph (a)(1)(i) of this section or as Class II pursuant to paragraph (b) of this section.

C. Change present subparagraph (6) to (7), (7) to (8) and (8) to (9).

Proposal No. 4. A. Amend § 1073.51 (a) (3) to read as follows:

Add or subtract one cent for each percent that the current Class I utilization percentage is, respectively, above the maximum or below the minimum standard utilization percentages for the month in the above table: *Provided,* Such adjustment shall not differ from the immediately preceding month by more than four cents.

B. Amend § 1073.51(b) as follows:

The Class II prices per hundredweight shall be the basic formula, computed pursuant to § 1073.50, for the month, plus 15 cents.

Proposal No. 5. Amend § 1073.71(f) of the present order and add new paragraphs to read as follows:

(f) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price" and except for the months specified in paragraphs (h) and (i) of this section shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section, an amount computed by multiplying the hundredweight of milk specified in paragraph (e) (2) of this section by the weighted average price;

(h) Subtract for each of the months of April, May, and June, an amount computed by multiplying the total hundredweight of milk received from producers during each respective month by 20 cents per hundredweight;

(i) Add for each of the months of September, October, and November, one-third of the amount deducted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

Proposed by the Dairy Division, Consumer and Marketing Service:

Proposal No. 6. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Kenneth M. Fell, Post Office Box 1979, Main Office, 4809 East First Street, Wichita, Kans., 67201, or from the Hearing Clerk, Room 112–A, Administration Building, U.S. Department of Agriculture, Washington, D.C., 20250, or may be there inspected.

Signed at Washington, D.C., on October 5, 1965.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 65–10740; Filed, Oct. 7, 1965; 8:47 a.m.]

Notices

SECURITIES AND EXCHANGE COMMISSION

[812-1716]

GOLCONDA MINING CORP.

Order Postponing Hearing

OCTOBER 5, 1965.

Golconda Mining Corp. ("Golconda"), Wallace, Idaho, an Idaho corporation, having filed an application pursuant to section 3(b)(2) of the Investment Company Act of 1940 requesting an order of the Commission declaring that Golconda is not an investment company;

The Commission on July 7, 1965, having issued a notice of and order for hearing on said application (investment Company Act Release No. 4298), such notice and order having provided that a hearing on the aforesaid application be held on the 24th day of August 1965, at 9:30 a.m., in the offices of the Commission's Seattle Regional Office, Ninth Floor, Hoge Building, 701 Second Avenue, Seattle, Wash.;

The Commission on August 18, 1965, having issued an order postponing said hearing until September 23, 1965, and on September 22, 1965, having issued an order further postponing said hearing until October 8, 1965;

Counsel for Golconda and counsel for the Division of Corporate Regulation having agreed and stipulated that said hearing, for good cause shown, may be postponed until October 23, 1965;

It is ordered, That the hearing in the aforesaid matter be, and hereby is, postponed until October 25, 1965, at the same hour and place.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65-10733; Filed, Oct. 7, 1965; 8:47 a.m.]

[812-1828]

INVESTORS SYNDICATE OF AMERICA, INC.

Application for Order Approving Amendment to Depositary Agreement of Face-Amount Certificate Company

OCTOBER 4, 1965.

Notice is hereby given that Investors Syndicate of America, Inc. ("ISA"), Investors Building, Eighth and Marquette, Minneapolis, Minn., a registered face-amount certificate company, has filed an application seeking an order pursuant to section 28(c) of the Investment Company Act of 1940 ("Act"), approving an amendment to a depositary agreement which amendment is proposed to be executed to cover the issuance and sale by ISA of two new series of face-amount certificates to be designated as Series 15A and Series 22A. All interested persons are referred to the application filed with the Commission for a full statement of the representations contained in the application which are summarized below.

Section 28(c) provides, in substance, to the extent relevant, that the Commission shall by order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit and maintain, with a bank all or any part of its investments required as certificate reserves under the provisions of section 28(b) of the Act.

On November 16, 1940, the Commission issued an order approving the depositary agreement between ISA and the Marquette National Bank which requires ISA to deposit and maintain qualified assets at least equal to the certificate reserve requirements of section 28 of the Act (Investment Company Act Release No. 18) for certain outstanding certificates. Subsequently, from time to time, the Commission has issued orders granting applications for amendments to the initial agreement to include coverage of new series of securities proposed to be issued. (Investment Company Act Release Nos. 792, 1895, 3105, 3552, and 3751.) The amendment to the depositary agreement, for which approval is now requested, concerns the deposit of assets to be maintained for the benefit of holders of the new Series 15A and 22A certificates. The terms of the agreement are the same except for the inclusion of the new series.

Notice is further given that any interested person may, not later than October 25, 1965, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65-10734; Filed, Oct. 7, 1965; 8:47 a.m.]

[812-1837]

MONSANTO INTERNATIONAL FINANCE CO.

Application for Order Exempting Company

OCTOBER 5, 1965.

Notice is hereby given that Monsanto International Finance Co. ("applicant"), 800 North Lindbergh Boulevard, St. Louis, Mo., 63166, a Delaware corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

The applicant was organized by Monsanto Co. ("Monsanto") under the laws of the State of Delaware in September 1965. All of the authorized stock of applicant, consisting of 10,000 shares of common stock, par value $10 a share, will be purchased for $10,000,000, and held by Monsanto. Monsanto will also acquire any additional securities, other than debt securities, which applicant may issue in the future and will not dispose of any of the securities of applicant held by Monsanto except to the applicant or to a wholly owned subsidiary of Monsanto.

Monsanto, a Delaware corporation, is engaged directly and through majority-owned subsidiaries and affiliates in the manufacture and sale of a widely diversified line of chemicals, plastics and allied products; in the manufacture and sale of chemical yarns and fibers; and in the production, refining and marketing of oil and gas and petroleum products.

Applicant has been organized in order to finance the expansion and development of Monsanto's foreign operations in a manner which is designed to assist in improving the balance-of-payments position of the United States, in compliance with the voluntary cooperation program instituted by the President in February 1965. Applicant intends to issue and sell an aggregate of $25,000,000 principal amount of Guaranteed Sinking Fund Debentures Due 1985 ("Debentures"). Monsanto will guarantee the principal and the sinking fund and interest payments on the debentures, and the debentures will be convertible on

and after May 1, 1966, into common stock of Monsanto. Any additional debt securities of applicant which may be issued to or held by the public will be guaranteed by Monsanto in the same manner as the debentures.

It is intended that the assets of applicant will be invested in or loaned to foreign subsidiaries and affiliates of Monsanto and invested in obligations of foreign governments or foreign financial institutions maturing in one year or less; and that at least 90 percent of such assets will be invested in or loaned to foreign companies at least 50 percent of whose outstanding voting securities are owned, directly or indirectly, by Monsanto, and which are primarily engaged in businesses other than that of investing, reinvesting, owning, holding or trading in securities. Applicant will proceed as expeditiously as possible with the investment of its assets in such manner. Pending the completion of such investment program applicant may invest its assets in obligations of foreign governments or foreign financial institutions maturing in 1 year or less in a proportion greater than that permitted above. Applicant will not acquire the securities representing such loans or investments for the purpose of sale and will not trade in such securities.

The U.S. Internal Revenue Service has ruled that United States persons will be required to report and pay an interest equalization tax with respect to acquisitions of the debentures, except where a specific statutory exemption is available. By financing its foreign operations through the applicant rather than through the sale of its own debt obligations, Monsanto will utilize an instrumentality the acquisition of whose debt obligations by United States persons would, generally, subject such persons to the interest equalization tax, thereby discouraging them from purchasing such debt obligations.

The debentures are to be sold to underwriters for offering outside the United States and will be delivered to the underwriters against receipt of payment therefor outside the United States. The agreements among underwriters will contain covenants by each underwriter to the effect that he will not offer, sell or deliver debentures in the United States or to citizens of or persons normally resident therein and that any dealer to whom he sells debentures will agree that he is purchasing the same as principal and not for reoffering, resale or delivery in the United States or to such citizens or residents. The agreements with dealers are to contain corresponding agreements by them.

Applicant intends to apply for listing of the debentures on the New York Stock Exchange.

Applicant asserts that it is not necessary or appropriate in the public interest or consistent with the protection of investors to regulate applicant under the Act, for the following reasons: (1) The sole purpose of applicant is to assist in improving the balance of payments program of the United States by serving as a vehicle through which Monsanto may obtain funds in foreign countries for its foreign operations; (2) applicant will not deal or trade in securities; (3) the public policy underlying the Act is not applicable to applicant and the security holders of applicant do not require the protection of the Act, because the payment of the debentures, which is guaranteed by Monsanto, and the value of the right to convert the debentures into shares of Monsanto's common stock do not depend on the operations or investment policy of applicant, for the debenture holders may ultimately look to the business enterprise of Monsanto and its subsidiaries and affiliated companies rather than solely to that of applicant; (4) when the debentures are listed on the New York Stock Exchange, the applicant's security holders will have the benefit of the disclosure and reporting provisions of the Securities Exchange Act of 1934 and of the New York Stock Exchange, and (5) the debentures will be offered and sold abroad to foreign nationals under circumstances designed to prevent any reoffering or resale in the United States or to any U.S. citizen or resident.

Notice is further given that any interested person may, not later than October 18, 1965, at 12:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 65-10735; Filed, Oct. 7, 1965; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 49]

FINANCE APPLICATIONS

OCTOBER 5, 1965.

The following publications are governed by the Interstate Commerce Commission's General Requirements governing notice of filing of applications under sections 20a except (12) and 214 of the Interstate Commerce Act. The Commission's order of May 20, 1964, providing for such publication of notice, was published in the FEDERAL REGISTER issue of July 31, 1964 (29 F.R. 11126), and became effective October 1, 1964.

All hearings and prehearing conferences, if any, will be called at 9:30 a.m., U.S. standard time unless otherwise specified.

F.D. No. 23819—By application filed September 27, 1965, Southern Railway Co., Post Office Box 1808, Washington, D.C., 20013, seeks authority under section 20a of the Interstate Commerce Act to assume obligation and liability in respect of $7,020,000 principal amount of its Equipment Trust No. 2 of 1965 Equipment Trust Certificates. Applicant's attorneys: James A. Bistline, General Solicitor and R. Allan Wimbish, Assistant General Solicitor, Southern Railway Co., Post Office Box 1808, Washington, D.C., 20013. Protests must be filed no later than 15 days from date of publication in the FEDERAL REGISTER.

F.D. No. 23824—By application filed October 1, 1965, Atlas Van-Lines, Inc., 1212 St. George Road, Evansville, Ind., 47703, seeks authority under section 214 of the Interstate Commerce Act to enter into an agreement with the Old National Bank in Evansville, Evansville, Ind., and pursuant to the terms thereof sell, from time to time, certain of its accounts receivable to said bank. Applicant's attorney: Herbert Burstein, Esq., Zelby & Burstein, 160 Broadway, New York, N.Y., 10038. Protests must be filed no later than 10 days from date of publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 65-10723; Filed, Oct. 7, 1965; 8:46 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 5, 1965.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 40049—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 373), for interested

carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in central states, middlewest, and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40050—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 374), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in central states, middlewest, and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40051—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 375), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in central states, middlewest, and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40052—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 376), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in central states, middlewest, and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40053—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 377), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in Central States, middlewest and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40054—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 378), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in Central States territory, on the one hand, and points in middle Atlantic and New England territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

FSA No. 40055—*Joint motor-rail rates—Eastern Central.* Filed by the Eastern Central Motor Carriers Association, Inc., agent (No. 379), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in middle Atlantic and New England territories, on the one hand, and points in Central States, middlewest and southwestern territories, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 4 to Eastern Central Motor Carriers Association, Inc., agent, tariff MF–ICC A–230.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 65–10724; Filed, Oct. 7, 1965; 8:46 a.m.]

[Notice 61]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 5, 1965.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules in Ex Parte No. MC 67 (49 CFR Part 240), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined, at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 113843 (Sub-No. 103 TA), filed October 1, 1965. Applicant: REFRIGERATED FOODS EXPRESS, INC., 316 Summer Street, Boston, Mass., 02210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (prepared) from Hamlin, Holley, and Williamson, N.Y., to points in Iowa, North Dakota, South Dakota, Nebraska, and Minnesota, for 150 days. Supporting shipper: Duffy-Mott Co., Inc., 370 Lexington Avenue, New York, N.Y., 10017. Send protests to: Donald G. Weiler, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 30 Federal Street, Boston, Mass., 02110.

No. MC 119767 (Sub-No. 121 TA), filed October 1, 1965. Applicant: BEAVER TRANSPORT CO., 100 South Calumet Street, Post Office Box 339, Burlington, Wis., 53105. Applicant's representative: Fred H. Figge (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned vegetables*, from Beaver Dam, Fox Lake, Ripon, and Rosendale, Wis., to points in Kentucky, Michigan, Missouri (except St. Louis, Mo.), and Ohio, for 180 days. Supporting shipper: Green Giant Co., Le Sueur, Minn. (K. O. Petrick, Motor Transportation Supervisor). Send protests to: W. F. Sibbald, Jr., District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 108 West Wells Street, Room 511, Milwaukee, Wis., 53203.

No. MC 119934 (Sub-No. 103 TA), filed October 1, 1965. Applicant: ECOFF TRUCKING, INC., 625 East Broadway, Fortville, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrate lime, and pebble lime*, in bags, from Lewisburg, Ohio, Dundee, Blissfield, Mt. Clemens, Ecorse, Detroit, Wayland, and Grayling, Mich., for 180 days. Supporting shipper: The Marble Cliff Quarries Co., 2100 Tremont Center, Columbus, Ohio, 43221. Send protests to: R. M. Hagarty, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 802 Century Building, 36 South Penn Street, Indianapolis, Ind., 46204.

No. MC 124111 (Sub-No. 7 TA) (Correction), filed September 3, 1965, published FEDERAL REGISTER, issue of September 14, 1965, and republished as corrected this issue. Applicant: SANDUSKY TRUCK AND TRAILER COMPANY, Post Office Box 2297, Sandusky, Ohio. Applicant's representative: Earl J. Thomas, 5850 North High Street, Post Office Box 70, Worthington, Ohio, 43085. The purpose of this republication is to show applicant's correct address, as shown above, in lieu of that shown in previous publication, which was in error.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 65–10725; Filed, Oct. 7, 1965; 8:46 a.m.]

[Notice 1243]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 5, 1965.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–68088. By order of September 29, 1965, the Transfer Board approved the transfer to Freeman Transfer, Inc., Fremont, Nebr., of the certificate in No. MC–25869 (Sub-No. 21), issued January 22, 1965, to Nolte Bros. Truck Line, Inc., South Omaha, Nebr., authorizing the transportation of: Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses (except hides, and tallow, in bulk, in tank vehicles) from points in Saunders County, Nebr., to St. Louis, Mo. Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr., attorney for transferor. William Gilmore, Courthouse, Fremont, Nebr., attorney for transferee.

No. MC–FC–68120. By order of September 29, 1965, the Transfer Board approved the transfer to C.O.D.E., Inc., Denver, Colo., of the certificate in No. MC–25869, issued January 28, 1964, to Nolte Bros. Truck Line, Inc., South Omaha, Nebr., authorizing the transportation of: Livestock, agricultural products, feed, agricultural machinery, road building machinery, flour, hardware, furniture, heating equipment, and petroleum products, in containers, between Auburn, Iowa, and Omaha, Nebr., serving specified intermediate and off-route points; general commodities, excluding household goods and other specified commodities, between Churdan, Iowa, and Omaha, Nebr., serving intermediate points and specified off-route points, from Churdan, Iowa, to Chicago, Ill., serving intermediate points and specified off-route points, from Chicago, Ill., to Churdan, Iowa, serving intermediate points and specified off-route points; Malt beverages, from Waukesha, Wis., to Carroll, Iowa; dry fertilizer and dry fertilizer ingredients, in bulk and in bags, from Omaha, Nebr., to Lohrville, Iowa, and points within 25 miles of Lohrville, from Omaha, Nebr., to points within 15 miles of Auburn, Iowa; feeds and lumber, from Omaha, Nebr., to points in Iowa as specified; wallpaper, from Joliet, Ill., to points in Iowa as specified; feeds, farm implements and machinery, hardware, twine, roofing materials, wire, steel fencing and posts, and reinforcing steel, from Chicago, Sterling, Forest Park, Canton, Rockford, Rock Falls, Streator, Rock Island, Moline, and East Moline, Ill., to points in Iowa as specified; livestock, between points in Iowa as specified, on the one hand, and, on the other, Chicago, Ill., and Omaha, Nebr.; from Lohrville, Iowa, and points within 25 miles thereof, to Omaha, Nebr.; farm implements and machinery, feed, livestock, petroleum, products, and paint, from Omaha, Nebr., to Lohrville, Iowa, and points within 25 miles thereof; agricultural implements, from Richmond, Ind., to points in specified Iowa Counties; and malt beverages, from St. Louis, Mo., to Britt, Fort Dodge, and Carroll, Iowa, from Milwaukee, Wis., to Carroll, Iowa. Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr., attorney for applicants.

No. MC–FC–68121. By order of September 29, 1965, the Transfer Board approved the transfer to C.O.D.E., Inc., Denver, Colo., of the certificate in No. MC–121557 (Sub-No. 1), issued March 15, 1965, to Utica Transfer, Inc., Utica, Nebr., authorizing the transportation of: General commodities, excluding commodities in bulk, household goods and other specified commodities, between points in Nebraska as specified. Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr., attorney for applicants.

No. MC–FC 68122. By order of September 29, 1965, the Transfer Board approved the transfer to C.O.D.E., Inc., Denver, Colo., of the certificate in Nos. MC–110483 and MC–110483 (Sub-No. 1), issued July 12, 1960 and December 13, 1961, to G. & H. Truck Line, Inc., Denver, Colo., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Denver, Colo., and Pueblo, Colo., serving the intermediate point of Colorado Springs; between Pine Bluffs, Wyo., and Denver, Colo., serving specified intermediate and off-route points; and between Pine Bluffs, Wyo., and points within 20 miles thereof, on the one hand, and, on the other, Sidney and Scottsbluff, Nebr. Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr., attorney for applicants.

No. MC–FC–68130. By order of September 29, 1965, the Transfer Board approved the transfer to Baumann Bros. Transportation, Inc., Grafton, Nebr., of the certificate in Nos. MC–25869 (Sub-No. 19), MC–25869 (Sub-No. 20), MC–25869 (Sub-No. 22), MC–25869 (Sub-No. 23), MC–25869 (Sub-No. 24), MC–25869 (Sub-No. 25), MC–25869 (Sub-No. 28), and MC–25869 (Sub-No. 29), issued December 2, 1964, June 2, 1965, March 26, 1965, March 16, 1965, June 11, 1965, March 29, 1965, July 9, 1965, and June 11, 1965, respectively, to Nolte Bros. Truck Line, Inc., South Omaha, Nebr., authorizing the transportation of: Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses (as restricted), from points in Saunders County, Nebr., to Milwaukee, Wis.; from the plantsite of Swift & Co. at Grand Island, Nebr., to Milwaukee and Madison, Wis., St. Louis, Union, and St. Joseph, Mo., Gary and Hammond, Ind., and points in Illinois; from the plantsite of Agar Packing Co. at Monmouth, Ill., to points in that part of Iowa west of U.S. Highway 69, and Nebraska; from the plantsite and storage facilities of Wilson & Co., Inc., at Cherokee, Iowa, to Omaha, Nebr., Milwaukee, Wis., and points in Illinois except East St. Louis, and points in the East St. Louis commercial zone; from points in Saunders County, Nebr., to points in Wisconsin, except Milwaukee, Wis.; between points in Saunders County, Nebr., on the one hand, and on the other, Council Bluffs, Iowa; and from the plantsite of Platte Valley Packing Co. in Dawson County, Nebr., to points in Iowa as specified, and those in Minnesota, South Dakota, and Wisconsin; and scrap metal, from Norfolk, Nebr., to Chicago, Ill., and Kansas City and St. Louis, Mo. Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr., attorney for applicants.

No. MC–FC–68144. By order of September 29, 1965, the Transfer Board approved the transfer to Truck Leasing, Inc., Taunton, Mass., of Certificates Nos. MC–79476 (Sub-No. 20) and MC–79476 (Sub-No. 22), issued March 5, 1965, and September 22, 1965, to Youngs Motor Truck Service, Inc., Taunton, Mass., authorizing the transportation of sand, abrasive or foundry, in bulk, from Coventry, R.I., and points in Barnstable and Plymouth Counties, Mass., to points in Connecticut, Massachusetts, New Hampshire, and Rhode Island; and sand, abrasive or foundry, in bulk, in dump vehicles, from Coventry, R.I., and points in Barnstable and Plymouth Counties, Mass., to New York, N.Y. Russell B. Curnett, 36 Circuit Drive, Edgewood Station, Providence, R.I., 02905, representative for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 65–10726; Filed, Oct. 7, 1965; 8:46 a.m.]

[Second Rev. S.O. 562; Pfahler's I.C.C. Order 193]

ANN ARBOR RAILROAD CO.

Diversion or Rerouting of Traffic

In the opinion of R. D. Pfahler, agent, the Ann Arbor Railroad Co. is unable to transport traffic routed over its line because of car ferry out of service.

It is ordered, That:

(a) Rerouting traffic. The Ann Arbor Railroad Co. being unable to transport traffic in accordance with shipper's routing over its line, because of car ferry out of service, is hereby authorized to divert or reroute such traffic to and from Kewaunee and Manitowoc, Wis.; and Manistique and Menominee, Mich., over any available route to expedite the movement regardless of the routing shown on the waybill. The billing covering all

such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained. The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) Notification to shippers. Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date. This order shall become effective at 9 a.m., October 4, 1965.

(g) Expiration date. This order shall expire at 11:59 p.m., October 29, 1965, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 4, 1965.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 65-10727; Filed, Oct. 7, 1965; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI66-81, etc.]

KERR-McGEE OIL INDUSTRIES, INC., ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, Effective Subject to Refund [1]

SEPTEMBER 29, 1965.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Ch. I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure [18 CFR 1.8 and 1.37(f)] on or before November 15, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-81	Kerr-McGee Oil Industries, Inc., Kerr-McGee Bldg., Oklahoma City, Okla., 73102.	12	20	Phillips Petroleum Co.[2] (Texas-Hugoton Field, Sherman County, Tex.) (R.R. District No. 10).	$1,118	8-30-65	[3] 9-30-65	[4] 10-1-65	[7] [9] 10.59239	[5] [6] [7] [8] 12.00273	RI61-364.
RI66-82	Texaco Inc., Post Office Box 52332, Houston, Tex., 77052.	144	7	Phillips Petroleum Co.[2] (Texas-Hugoton Field, Hansford County, Tex.) (R.R. District No. 10).	93	9-10-65	[3] 10-11-65	[4] 10-12-65	[10] [12] 9.8423	[5] [6] [10] [11] 10.1811	RI61-331.

[2] Phillips resells the gas under its FPC Gas Rate Schedule No. 4 to Michigan Wisconsin Pipe Line Co. The effective rate under such rate schedule is 14.0635 cents per Mcf plus applicable tax reimbursement which is in effect subject to refund in Docket No. RI60-349. Phillips' further increase to 15.22 cents per Mcf plus applicable tax reimbursement is suspended in Docket No. RI65-526 and not, as yet, made effective.

[3] The stated effective date is the first day after expiration of the required statutory notice.

[4] The suspension period is limited to 1 day.

[5] Revenue-sharing rate increase.

[6] Pressure base is 14.65 p.s.i.a.

[7] Subject to a downward B.t.u. adjustment and a deduction of 0.4466 cent per Mcf for sour gas.

[8] Based on 165.72 percent of a base price of 7.1463 cents. Total rate includes 0.15933 cent per Mcf tax reimbursement.

[9] Based on 165.72 percent of a base price of 6.3066 cents (165.72 percent equals Phillips' rate of 14.0635 cents divided by Phillips' base price of 8.84863 cents times 100)-Total rate includes 0.14109 cent per Mcf tax reimbursement.

[10] Subject to a downward B.t.u. adjustment and includes a deduction of 0.4466 cent per Mcf sour gas.

[11] Based on 149.937 percent of a base price of 7.1463 cents less 0.4466 cent per Mcf adjustment for sour gas (149.937 percent equals Phillips' rate of 14.0635 cents divided by Phillips' base price of 9.3796 cents times 100). Total rate includes 0.1356 cent per Mcf tax reimbursement.

[12] Based on 165.72 percent of a base price of 6.3066 cents less 0.4466 cent per Mcf adjustment for sour gas. Total rate includes 0.1311 cent per Mcf tax reimbursement.

[1] Does not consolidate for hearing or dispose of the several matters herein.

Kerr-McGee Oil Industries, Inc. (Kerr-McGee), requests that its proposed rate increase be permitted to become effective as of September 13, 1965. Texaco Inc. (Texaco), requests an effective date of October 1, 1965, for its proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for Kerr-McGee and Texaco's rate filings and such requests are denied.

Respondents' proposed revenue-sharing rate increases are for wellhead sales of gas to Phillips Petroleum Co. (Phillips) from the Texas-Hugoton Field in Sherman and Hansford Counties, Tex. (Railroad District No. 10). Phillips gathers and resells the residue gas after processing in its Sherman Gasoline Plant to Michigan Wisconsin Pipe Line Co. under its FPC Gas Rate Schedule No. 4 at a rate of 14.06350 cents per Mcf plus applicable tax reimbursement which is in effect subject to refund in Docket No. RI60-349 (a subsequent rate increase to 15.22 cents per Mcf plus tax reimbursement is suspended in Docket No. RI65-526). Kerr-McGee and Texaco's increased rates are based on Phillips' related resale rate to Michigan Wisconsin Pipe Line Co. Kerr-McGee's proposed rate exceeds the area increased rate ceiling of 11.0 cents per Mcf for Texas Railroad District No. 10. Texaco's proposed rate does not exceed the area rate ceiling but the sale related thereto is considered to be for nonpipeline quality gas. We consider the area increased rate ceiling to be applicable in both of these cases at the outlet of the processing plant which is the point of delivery to the pipeline company. Under the circumstances, we believe that Kerr-McGee and Texaco's proposed rate increases should be suspended for one day from the date shown in the "Effective Date" column on the attached Appendix A.

Phillips has protested the proposed increased rate filed by Kerr-McGee on the basis that the method of computing such rate was done improperly. Kerr-McGee and Phillips differ as to which of the base prices is applicable at this time to be used in computing the contract rate. Phillips has not protested as to Texaco's rate filing. In view of Phillips' aforementioned protest, the hearing provided for Kerr-McGee herein shall concern itself with the contractual issue raised by Phillips as well as the statutory lawfulness of Kerr-McGee's proposed increased rate.

[F.R. Doc. 65-10595; Filed, Oct. 7, 1965; 8:45 a.m.]

[Docket No. RI66-83 etc.]

SINCLAIR OIL & GAS CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, Effective Subject to Refund [1]

SEPTEMBER 29, 1965.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the Regulations pertaining thereto [18 CFR Ch. I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure [18 CFR 1.8 and 1.37(f)] on or before November 15, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI66-83	Sinclair Oil & Gas Co. (Operator), et al., Post Office Box 521, Tulsa, Okla., 74102.	237	3	Cities Service Gas Co. (Northwest Lovedale Field, Harper County, Okla.) (Panhandle Area).	$10,389	9-1-65	[2] 10-2-65	[3] 10-3-65	[6] 16.0	[4 5 6] 17.0	
RI66-84	Tenneco Oil Co., Post Office Box 18, Houston 1, Tex.	19	1	Cities Service Gas Co. (Northeast Vining Field, Grant County, Okla.) (Oklahoma "Other" Area).	4,223	9-3-65	[7] 10-4-65	[3] 10-5-65	[6 8] 13.0	[4 5 6 8] 14.0	
	Tenneco Oil Co	123	1	Cities Service Gas Co. (Southwest Wakita Field, Grant County, Okla.) (Oklahoma "Other" Area).	1,443	9-3-65	[7] 10-4-65	[3] 10-5-65	[6 8] 13.0	[4 5 6 8] 14.0	
RI66-85	Sinclair Oil & Gas Co., Post Office Box 521, Tulsa, Okla., 74102. Attn.: Mr. W. L. Minturn.	4	5	El Paso Natural Gas Co. (San Juan Basin, San Juan County, N. Mex.) (San Juan Basin Area).	11,508	9-1-65	[2] 10-2-65	[3] 10-3-65	[10 11] 13.2020	[4 9 10 11] 14.2188	RI64-3.
	Sinclair Oil & Gas Co.	5	4	do	532	9-1-65	[2] 10-2-65	[3] 10-3-65	[10 11] 13.2020	[4 9 10 11] 14.2188	RI64-3.
	do	6	4	do	86	9-1-65	[2] 10-2-65	[3] 10-3-65	[10 11] 13.2020	[4 9 10] 14.2188	RI64-3.

[2] The stated effective date is the effective date requested by Respondent.
[3] The suspension period is limited to 1 day.
[4] Periodic rate increase.
[5] Pressure base is 14.65 p.s.i.a.
[6] Subject to a downward B.t.u. adjustment.
[7] The stated effective date is the first day after expiration of the required statutory notice.
[8] Subject to 0.75 cent per Mcf dehydration charge and 1.5 cents compression charge to be deducted by buyer if gas is compressed by buyer.
[9] Pressure base is 15.025 p.s.i.a.
[10] Includes 1.0 cent per Mcf added to reflect minimum guarantee for liquids.
[11] Includes partial reimbursement for full 2.55 percent New Mexico Emergency School Tax.

[1] Does not consolidate for hearing or dispose of the several matters herein.

Tenneco Oil Co. (Tenneco) requests an effective date of September 1, 1965, for its proposed rate increases. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Tenneco's rate filings and such request is denied.

Sinclair Oil & Gas Co.'s (Sinclair) proposed increased rates contained in Supplement Nos. 5, 4 and 4 to its FPC Gas Rate Schedule Nos. 4, 5, and 6, respectively, reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax which was increased from 2.0 percent to 2.55 percent on April 1, 1963. The buyer, El Paso Natural Gas Co. (El Paso), in accordance with its policy of protesting all tax filings proposing reimbursement for the New Mexico Emergency School Tax in excess of 0.55 percent, is expected to file a protest to these rate increases. El Paso questions the right of Sinclair under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico tax legislation effected a higher rate of at least 0.55 percent, it claims there is controversy as to whether or not the new legislation effected an increased tax rate in excess of 0.55 percent. Under the circumstances, we shall provide that the hearing provided for herein for Sinclair shall concern itself with the contractual basis as well as the statutory lawfulness of Sinclair's proposed increased rates which El Paso has or will protest. Sinclair did not include as part of its proposed rates under the aforementioned rate schedules the contractually provided 1.0 cent per Mcf minimum guarantee for liquids. The addition of this minimum guarantee of 1.0 cent per Mcf to the base rate results in Sinclair's proposed rate increases exceeding the applicable 13.0 cents per Mcf area ceiling for increased rates in the San Juan Basin Area by the 1.0 cent per Mcf minimum guarantee for liquids and tax reimbursement, and should be suspended as hereinbefore ordered for 1 day from October 2, 1965, the proposed effective date.

The basic contracts of Sinclair Oil & Gas Co. (Operator), et al. (Supplement No. 3 to Sinclair's FPC Gas Rate Schedule No. 237) and Tenneco (Supplement No. 1 to Tenneco's FPC Gas Rate Schedule Nos. 19 and 123, respectively) were executed subsequent to September 28, 1960, the date of issuance of the Commission's Statement of General Policy No. 61–1, as amended, and the proposed rates are above the applicable area ceiling for increased rates but below the initial service ceiling for the areas involved. We believe, in this situation, Sinclair and Tenneco's above supplements should be suspended for 1 day from the date shown in the "Effective Date" column in the attached Appendix A.

All of the proposed increased rates and charges exceed the applicable area price level for increased rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended [18 CFR, Ch. I, Pt. 2, Sec. 2.56].

[F.R. Doc. 65–10598; Filed, Oct. 7, 1965; 8:45 a.m.]

[Docket No. RI66–86, etc.]

SINCLAIR OIL & GAS CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

SEPTEMBER 29, 1965.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR Ch. I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure [18 CFR 1.8 and 1.37(f)] on or before November 15, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66–86	Sinclair Oil & Gas Co., Post Office Box 521, Tulsa, Okla., 74102.	19	6	Arkansas Louisiana Gas Co. (Chickasha Field, Grady County, Okla.) (Oklahoma "Other" Area).	$11,284	9–1–65	[2] 10–2–65	3–2–66	[3] 12.0	[3] [4] 13.0	
	Sinclair Oil & Gas Co.	30	4	Lone Star Gas Co. (Sholem Alachem Field, Carter County, Okla.) (Oklahoma "Other" Area).	1,596	9–1–65	[2] 10–2–65	3–2–66	11.0	[4] 12.0	
	do	142	5	Cities Service Gas Co. (East Round Hills, et al., Fields, Grant, and Alfalfa Counties, Okla.) (Oklahoma "Other" Area).	11,370	9–1–65	[2] 10–2–65	3–2–66	[5] 12.0	[4] [5] 14.0	
	do	161	3	El Paso Natural Gas Co. (West Panhandle Field, Gray County, Tex.) (R.R. District No. 10).	818	9–1–65	[2] 10–2–65	3–2–66	12.0	[4] 13.0	
	do	226	4	Colorado Interstate Gas Co. (Hugoton Field, Grant, and Kearny Counties, Kans.).	100,540	9–1–65	[2] 10–2–65	3–2–66	[5] 11.0	[4] [5] 13.5	
	do	239	5	Lone Star Gas Co. (East Doyle Field, Stephens County Okla.) (Oklahoma "Other" Area).	50,913	9–1–65	[2] 10–2–65	3–2–66	15.0	[4] 16.8	
	do	180	4	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex.) (San Juan Basin Area).	1,205	9–1–65	[2] 10–2–65	3–2–66	[6] 13.2176	[7] [8] 14.2343	RI64–3.
RI66–87	Tenneco Oil Co. (Operator), et al., Post Office Box 18, Houston 1, Tex.	118	1	Cimarron Transmission Co. (East Marietta Field, Love County, Okla.) (Oklahoma "Other" Area).	271	9–3–65	[9] 10–4–65	3–4–66	[10] 15.0	[4] [10] 16.0	
	Tenneco Oil Co. (Operator), et al.	125	2	Lone Star Gas Co. (Doyle Field, Stephens County, Okla.) (Oklahoma "Other" Area).	456	9–3–65	[9] 10–4–65	3–4–66	14.0	[4] 15.0	
RI66–88	McAlester Fuel Co., McAlester Bldg., Magnolia, Ark.	3	10	Texas Eastern Transmission Corp. (Fort Lynn Field, Miller County Ark.).	500	9–7–65	[11] 1–1–65	4–1–66	[5] [11] 15.075	[4] [5] [11] 15.276	RI65–253.

See footnotes at end of table.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI66-89	Reserve Oil & Gas Co., et al., 1700 Fidelity Union Tower, Dallas, Tex., 75201. Attn.: Mr. Norman P. Hines, Jr.	24	[13] 8	United Gas Pipe Line Co. (North Pettus Field, Bee, Karnes, and Goliad Counties, Tex.) (R.R. District No. 2).	10,166	9-1-65	[2] 10-2-65	3-2-66	14.0	[4] [12] 15.4350	
RI66-90	Manler Oil Co. (Operator), agent, et al., 1204 Wilson Bldg., Corpus Christi, Tex.	1	4	Valley Gas Transmission, Inc. (Ramirena Field, Live Oak County, Tex.) (R.R. District No. 2).	2,500	[14] 9-2-65	[3] 11-5-65	4-5-66	14.0	[3] [4] 15.0	
RI66-91	Marathon Oil Co., 539 South Main St., Findlay, Ohio, 45840. Attn.: R. Joseph Opperman, Esq.	90	2	Southern Union Gathering Co. (La Plata Field, San Juan County, N. Mex.) (San Juan Basin Area).	959	9-2-65	[2] 10-3-65	3-3-66	13.0	[3] [7] 14.0	

[2] The stated effective date is the effective date requested by Respondent.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] Subject to downward B.t.u. adjustment.
[6] Subject to 0.75 cent per Mcf dehydration charge and 1.5 cents compression charge deducted by buyer.
[7] Pressure base is 15.025 p.s.i.a.
[8] Includes partial reimbursement for full 2.55 percent New Mexico Emergency School Tax.
[9] The stated effective date is the first day after expiration of the required statutory notice.
[10] Subject to proportionate upward and downward B.t.u. adjustment for gas containing more or less than 1000 B.t.u.'s per cubic foot (present B.t.u. content of gas is 1040 B.t.u.).
[11] Includes 0.175 cent per Mcf tax reimbursement (Arkansas Severance Tax and Conservation Assessment).
[12] Redetermined rate increase.
[13] Includes Letter Agreement dated Aug. 20, 1965, providing for the redetermined rate for the 3-year period commencing Oct. 1, 1965.
[14] As supplemented by Sept. 20, 1965, filing.

Tenneco Oil Co. (Operator), et al. (Tenneco), requests an effective date of September 1, 1965, for its proposed rate increases. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Tenneco's rate filings and such request is denied.

Supplement No. 4 to Sinclair Oil & Gas Co.'s (Sinclair) FPC Gas Rate Schedule No. 180 reflects partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax which was increased from 2.0 percent to 2.55 percent on April 1, 1963. The buyer, El Paso Natural Gas Co. (El Paso), in accordance with its policy of protesting all tax filings proposing reimbursement for the New Mexico Emergency School Tax in excess of 0.55 percent, is expected to file a protest to this rate increase. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico tax legislation effected a higher rate of at least 0.55 percent, it claims there is controversy as to whether or not the new legislation effected an increased tax rate in excess of 0.55 percent. Under the circumstances, we shall provide that the hearing provided for herein for Sinclair shall concern itself with the contractual basis as well as the statutory lawfulness of the proposed increased rate contained in Supplement No. 4 to Sinclair's FPC Gas Rate Schedule No. 180 which El Paso has or will protest.

McAlester Fuel Co.'s proposed increased rate covers a sale in Arkansas where no formal ceiling rates have been established The increased rate does exceed the 14.0 cents per Mcf ceiling established for adjacent Texas Railroad District No. 6 which has been used for similar cases in the past.

All of the proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Pt. 2, Sec. 2.56).

[F.R. Doc. 65-10599; Filed, Oct. 7, 1965; 8:45 a.m.]

[Docket No. RI66-93]

SINCLAIR OIL & GAS CO.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates

SEPTEMBER 29, 1965.

On September 1, 1965, Sinclair Oil & Gas Co. (Sinclair) [1] tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are designated as follows:

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI66-93	Sinclair Oil & Gas Co., Post Office Box 521, Tulsa, Okla., 74102.	39	10	The Shamrock Oil and Gas Corp.[2] (West Panhandle Field, Moore County, Tex.) (R.R. District No. 10).	$501	9-1-65	[3] 10-2-65	3-2-66	[7] 11.0	[4] [5] [6] 12.0	
	Sinclair Oil & Gas Co.	55	[9] [10] 4	Cities Service Gas Co. (Hartner and Early Fields, Barber County, Kans.).	26,127	9-1-65	[3] 10-2-65	3-2-66	[7] [8] 12.0	[4] [5] [8] 14.0	

[2] Shamrock processes the gas at its McKee Plant in Moore County from which it resells residue gas at both clean rates and rates effective subject to refund.
[3] The stated effective date is the first day after expiration of the required statutory notice.
[4] Favored-nation rate increase.
[5] Pressure base is 14.65 p.s.i.a.
[6] Bases on increases in price paid by Shamrock to its royalty owners in same area: (Letter dated Apr. 11, 1961, advising Sinclair of the increases on file as part of Supplement No. 8 to its FPC Gas Rate Schedule No. 39.)
[7] Settlement rate.
[8] Subject to downward B.t.u. adjustment.
[9] Filing completed Sept. 8, 1965.
[10] Includes Letter Agreement dated Nov. 17, 1964, which provides for increased rate.

[1] Address is Post Office Box 521, Tulsa, Okla., 74102.

Sinclair's proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended (18 CFR, Ch. I, Pt. 2, Sec. 2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges contained in Supplement Nos. 10 and 4 to Sinclair's FPC Gas Rate Schedule Nos. 39 and 55, respectively, and that such supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement Nos. 10 and 4 to Sinclair's FPC Gas Rate Schedule Nos. 39 and 55, respectively.

(B) Pending such hearing and decision thereon, Supplement Nos. 10 and 4 to Sinclair's FPC Gas Rate Schedule Nos. 39 and 55, respectively, are hereby suspended and the use thereof deferred until March 2, 1966, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before November 15, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 65–10600; Filed, Oct. 7, 1965; 8:45 a.m.]

[Docket No. G–2933, etc.]

TEXAS GAS PRODUCING CO. ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificate [1]

SEPTEMBER 28, 1965.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service heretofore authorized as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 20, 1965.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given: *Provided, however,* That pursuant to § 2.56, Part 2, Statement of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, as amended, all permanent certificates of public convenience and necessity granting applications, filed after April 15, 1965, without further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing such certificate application, or within the time fixed herein for the filing of protests or petitions to intervene the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT, *Acting Secretary.*

Docket No. and date filed	Applicant	Purchaser, field and location	Price per Mcf	Pressure base
G–2933 9–13–65 [1]	Texas Gas Producing Co., 633 Meadows Bldg., Dallas, Tex.	Mississippi River Fuel Corp.,[2] Woodlawn Field, Harrison County, Tex. (R.S. No. 2).	[3] 14.6392	14.65
		Mississippi River Fuel Corp.[2] Woodlawn Field, Harrison County, Tex. (R.S. No. 3).	[4] 15.1440	14.65
G–4615 C 9–20–65	Chas. A. Daubert (Operator), et al., 542 Milam Bldg., San Antonio, Tex., 78205.	United Gas Pipe Line Co., Lou Ella and Sandia Fields, Jim Wells, Live Oak, and San Patricio Counties, Tex.	13.4196	14.65
G–6119 E 9–17–65	George L. Buckles (successor to Albert Gackle, agent, et al.), Post Office Box 56, Monahans, Tex.	El Paso Natural Gas Co., Jalmat Field, Lea County, N. Mex.	10.5	14.65
G–11049 C 9–13–65	Tidewater Oil Co., Post Office Box 1404, Houston, Tex., 77001.	Tennessee Gas Transmission Co., East and West Cameron Areas, Offshore Cameron Parish, La.	19.5	15.025
G–11952 C 9–20–65	Socony Mobil Oil Co., Inc., Post Office Box 2444, Houston, Tex., 77001.	United Gas Pipe Line Co., Boyce and South Porter Fields, Goliad, Karnes, and Dewitt Counties, Tex.	13.2002	14.65
G–12903 C 5–24–65	Union Oil Co. of California, Union Oil Center, Los Angeles, Calif., 90017.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla.	[5] [6] 17.0	14.65
G–16453 C 10–23–61	Alvin O. Hope (Operator), et al.	West Lake Natural Gasoline Co. and Holly Corp., Lake Trammell Field, Nolan County, Tex.	[7] 8.5	14.65
CI61–1024 C 9–21–65	Socony Mobil Oil Co., Inc. (Operator), et al., Post Office Box 2444, Houston, Tex., 77001.	Natural Gas Pipeline Co. of America, North Custer City Field, Custer County, Okla.	15.0	14.65
CI61–1252 D 1–18–65 [8]	The Pure Oil Co. (Operator), et al., 200 East Golf Rd., Palatine, Ill., 60067.	Michigan Wisconsin Pipe Line Co., acreage in Woodward County, Okla.	Assigned	----------
CI62–220 8–23–65 [9]	Tamarack Petroleum Co., Inc., agent (Operator), et al., 413 First Savings & Loan Bldg., Midland, Tex.	Texas Eastern Transmission Corp., Dial Field, Goliad County, Tex.	[10] 12.0	14.65
CI63–1166 C 8–12–65	Harry L. Blackstock, Jr. (Operator), et al., 205 Northwest 53d Pl., Oklahoma City, Okla.	Arkansas Louisiana Gas Co., Southeast Ames Field, Major County, Okla.	13.5	14.65
CI63–1461 C 9–20–65	Cleary Petroleum, Inc. (Operator), et al., 310 Kermac Bldg., Oklahoma City, Okla., 73102.	Arkansas Louisiana Gas Co., Starr Field, Kingfisher and Blaine Counties, Okla.	[11] 15.0	14.65
CI64–49 E 7–13–65	Belco Petroleum Corp. (successor to Walter Duncan), 630 3d Ave., New York City, N.Y.	El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex.	[12] 14.0	15.025
CI64–165 C 9–7–65	D. J. Simmons, et al., 3590 McCart St., Fort Worth, Tex., 76110.	United Gas Pipe Line Co., Monroe Gas Field, Union Parish, La.	[13] 11.0	14.65

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein, nor should it be so construed.

Docket No. and date filed	Applicant	Purchaser, field and location	Price per Mcf	Pressure base
CI64-536 C 9-20-65	Thomas J. Blaho, Jr., et al., 39 Byrer Ave., Uniontown, Pa.	Consolidated Gas Supply Corp., Troy District, Gilmer County, W. Va.	25.0	15.325
CI64-731 C 9-20-65	King Resources Co.[14] (Operator), et al., 324 North Robinson, Suite 200, Oklahoma City, Okla., 73102.	Northern Natural Gas Co., Northeast Dower Area, Beaver County, Okla.	17.0	14.65
CI64-981 C 9-22-65	Sun Oil Co., (Southwest Division), 1608 Walnut St., Philadelphia, Pa., 19103.	Northern Natural Gas Co., Follett Field, Lipscomb County, Tex.	17.0	14.65
CI64-1524 C 9-20-65	Cecil Meadows, et al., d.b.a. M & M Drilling, Post Office Box 54, Spencer, W. Va.	Consolidated Gas Supply Corp., Washington District, Calhoun County, W. Va.	25.0	15.325
CI65-180 E 7-13-65	Belco Petroleum Corp. (successor to Walter Duncan), 630 3d Ave., New York City, N.Y.	El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex.	13.0	15.025
CI65-1190 C 9-20-65	Continental Oil Co., Post Office Box 2197, Houston, Tex., 77001.	Michigan Wisconsin Pipe Line Co., Woodward Area, Woodward County, Okla.	[13] 17.0	14.65
CI66-19 A 7-12-65 [16] 9-10-65 [17]	Sunray DX Oil Co., Post Office Box 2039, Tulsa, Okla., 74102.	El Paso Natural Gas Co., Big Lake Field, Reagan County, Tex.	16.216	14.65
CI66-212 B 9-16-65	Clif Mock Co., Post Office Box 14548, Houston, Tex., 77021.	Tennessee Gas Transmission Co., Magnet Withers Field, Wharton County, Tex.	Uneconomical	----------
CI66-213 A 9-17-65	Harper-Smith & Associates, Inc. (Operator), et al., Post Office Drawer S, Boca Raton, Fla.	United Gas Pipe Line Co., Yanta Field, Goliad County, Tex.	13.0	14.65
CI66-214 B 9-15-65	Cumberland Gas Corp., 1201 Union Bldg., Charlestown, W. Va.	Cabot Corp., acreage in various counties in W. Va.	(18)	----------
CI66-215 B 9-15-65	Southeastern Gas Co., 1201 Union Bldg., Charlestown, W. Va.	----do----------	(18)	----------
CI66-216 B 9-15-65	Tuppers Creek Gas Co., 302 Jarvis St., Charlestown, W. Va.	----do----------	(18)	----------
CI66-217 B 9-15-65	Fisher Gas Co., 302 Jarvis St., Charlestown, W. Va.	----do----------	(18)	----------
CI66-218 B 9-15-65	Tuppers Creek Gas Co., 302 Jarvis St., Charlestown, W. Va.	----do----------	(18)	----------
CI66-219 A 9-20-65	David Crow (Operator), et al., c/o John M. Shuey, attorney, 604 Johnson Bldg., Shreveport, La.	United Gas Pipe Line Co., Washington Field, St. Landry Parish, La.	15.0	15.025
CI66-220 A 9-20-65	Carl E. Gungoll and Henry H. Gungoll, Box 581, Enid, Okla.	Panhandle Eastern Pipe Line Co., Northwest Oakdale Field, Woods County, Okla.	17.0	14.65
CI66-221 A 9-22-65	DAMAC Corp., Oil Industries Bldg., Corpus Christi, Tex., and W. R. Anderson, trustee, 300 Petroleum Tower, Corpus Christi, Tex.	Landa Oil Co., Quinto Creek Field Area, Jim Wells and Nueces Counties, Tex.	10.5	14.65
CI66-222 A 9-22-65	Arrowhead Petroleum, Inc., 1616 Wichita Plaza, Wichita, Kans.	Cities Service Gas Co., acreage in Barber County, Kans.	14.0	14.65
CI66-223 [19] (CI65-924) F 8-31-65	Skelly Oil Co. (Operator), et al. (successor to Steve Gose (Operator), et al.), Post Office Box 1650, Tulsa, Okla., 74102.	Fort Smith Gas Corp., Overstreet Unit, Le Flore County, Okla.	12.28	14.65
CI66-224 B 9-17-65	Jerome M. Westheimer, et al., Little Bldg., Ardmore, Okla., 73401.	Cimarron Transmission Co., acreage in Love County, Okla.	Depleted	----------

See footnotes at end of table.

Docket No. and Date Filed	Applicant	Purchaser, Field and Location	Price Per Mcf	Pressure Base
CI66-225 B 9-21-65	Cecil B. Dean, et al., d.b.a. Riley Gas Co., 610½ Main St., Point Pleasant, W. Va.	Consolidated Gas Supply Corp., Triadelphia District, Logan County, W. Va.	([20])	----------
CI66-226 A 9-22-65	Sun Oil Co. (Southwest Division), 1608 Walnut St., Philadelphia, Pa., 19103.	Phillips Petroleum Co., Texas-Hugoton Field, Hansford County, Tex.	[21] 11.0	14.65
CI66-227 B 9-22-65	Phillips Petroleum Co., Bartlesville, Okla., 74004.	Panhandle Eastern Pipe Line Co., Southwestern-Collins Unit, West Plains Field, Seward County, Kans.	Depleted	----------

[1] Amendment to certificate filed to amend basic contracts to dedicate acreage between the top of the Travis Peak and 7,000 feet thereunder.
[2] Now Mississippi River Corp.
[3] Rate in effect subject to refund in Docket No. RI64-740.
[4] Rate in effect subject to refund in Docket No. RI64-730.
[5] Plus upward B.t.u. adjustment.
[6] By letter filed Sept. 20, 1965, applicant advised it would be willing to accept authorization for the additional acreage conditioned to the rate specified in Condition (1) of its temporary certificate issued Aug. 20, 1965. A rate of 19.5 cents per Mcf is presently effective subject to refund in Docket No. RI64-371. The previous (initial service) price was 17.0 cents per Mcf.
[7] Rate in effect subject to refund in Docket No. RI60-401. 8.5-cent rate is 50 percent of the price (17.0 cents per Mcf) West Lake receives when they resell the gas to El Paso Natural Gas Co.
[8] Deletes acreage assigned to Cleary Petroleum, Inc.; represents that portion of acreage for which certificate is filed for in Docket No. CI65-1255.
[9] Amendment to the certificate filed to add depth only.
[10] Subject to downward B.t.u. adjustment and a compression charge of 1.0 cent per Mcf per stage of compression, when applicable.
[11] Applicant states its willingness to accept certificate for the additional acreage conditioned upon the same terms as was the original certificate issued in Docket Nos. G-19417, et al.
[12] Includes 1.0-cent-per-Mcf minimum guarantee for liquids. Rate in effect subject to refund in Docket No. RI64-671.
[13] Subject to reduction for compression.
[14] Formerly King-Stevenson Gas & Oil Co.
[15] Applicant states its willingness to accept certificate for the additional acreage conditioned upon the same terms as the original certificate.
[16] Application previously noticed July 20, 1965, in Docket Nos. G-4544, et al., at a total initial rate of 16.1536 cents per Mcf.
[17] Corrected contract summary filed to reflect a total initial rate of 16.216 cents per Mcf in lieu of 16.1536 cents.
[18] Gas no longer sold in interstate commerce.
[19] Application erroneously noticed Sept. 14, 1965, in Docket Nos. G-3869, et al. as a total succession in Docket No. CI65-924.
[20] Production no longer economically feasible.
[21] 0.4466 cent per Mcf deducted if sour gas is delivered.

[F.R. Doc. 65-10601; Filed, Oct. 7, 1965; 8:45 a.m.]

[Docket No. RI66-95, etc.]

CABOT CORP.

Order Accepting Compliance Filings and Rate Increase Filing, Providing for Hearing on and Suspension of Proposed Change in Rate, Effective Subject to Refund

SEPTEMBER 30, 1965.

Cabot Corp. (SW) (Cabot) has tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI63-95	Cabot Corp., Southwest, Post Office Box 1101, Pampa, Tex.	54	12	Colorado Interstate Gas Co.[1] (Laverne Field, Harper County, Okla.) (Panhandle Area).	$29	8-31-65	[2]10-1-65	[3]10-2-65	[7]16.0	[4][6]17.696	RI63-46.[8]
RI62-450	Cabot Corp., Southwest.	60	7	Colorado Interstate Gas Co. (Mocane Field, Beaver County, Okla.) (Panhandle Area).	407	8-31-65	[2]10-1-65	([11])	17.0	[4][9]19.142	RI62-450.[10]

[1] Applicable to acreage included under Supplement No. 6 only for which upward B.t.u. adjustment has been eliminated during period of temporary authorization.
[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] The suspension period is limited to 1 day.
[4] Increase due to application of proportional upward B.t.u. adjustment.
[5] Pressure base is 14.65 p.s.i.a.
[6] Includes base rate of 16.0 cents per Mcf plus upward B.t.u. adjustment (gas contains 1106 B.t.u. per cu. ft.). Base rate subject to upward and downward B.t.u. adjustment.
[7] Subject to downward B.t.u. adjustment.
[8] Supplement No. 8 is in effect subject to refund in Docket No. RI63-46. Suspension order shows increased rate as 17.6708 (which includes 16.0 cents base rate plus upward B.t.u. adjustment). Applicable to all the acreage covered by the rate schedule. However, Supplement No. 8 specifically states that the upward B.t.u. adjustment will not be applicable to acreage included under Supplement No. 6.
[9] Includes base rate of 17.0 cents per Mcf plus upward B.t.u. adjustment (gas contains 1126 B.t.u. per cu. ft.). Base rate subject to upward and downward B.t.u. adjustment.
[10] Rate in effect subject to refund in Docket No. RI62-450 (upward B.t.u. adjustment not applicable). Rate subject to downward B.t.u. adjustment.
[11] Accepted subject to refund.

Cabot requests that its proposed rate changes be permitted to become effective as of June 10, 1965. Good cause has not not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Cabot's rate filings and such request is denied.

In Opinion No. 464 issued June 10, 1965, Cabot was issued permanent certificates for the sales involved here at an initial rate of 15 cents per Mcf plus upward B.t.u. adjustment. Prior to that time Cabot was collecting subject to refund in Docket No. RI63-46 an increased rate of 16 cents per Mcf for sales under its Rate Schedule No. 54. The upward B.t.u. adjustment was not applicable to the 16-cent rate. The initial rate, inclusive of upward B.t.u. adjustment, authorized under Opinion No. 464 is 16.590 cents per Mcf for sales under Rate Schedule No. 54 (based on 1106 B.t.u.'s stated in the filing). Since the authorized initial rate exceeds the previously effective 16 cents per Mcf rate, the effect of Opinion No. 464 is to create a locked-in period ending June 9, 1965, for the 16 cents per Mcf rate collected subject to refund in Docket No. RI63-46, with the authorized initial rate becoming effective as of June 10, 1965. The proposed increased rate contained in Supplement No. 12 to Cabot's Rate Schedule No. 54 must therefore be suspended in a new docket because of the locked-in period involved in Docket No. RI63-46. In view of the unusual circumstances surrounding this filing, it is appropriate to suspend it for only 1 day.

With respect to sales under Cabot's Rate Schedule No. 60, the application of the upward B.t.u. adjustment to the initial base rate of 15 cents per Mcf results in a total initial rate of 16.89 cents (based on 1126 B.t.u.'s stated in the filing). Since the 16.89 cents initial rate does not exceed the 17 cents increased rate (to which the upward B.t.u. adjustment was not applicable) in effect, subject to refund in Docket No. RI62-450, a locked-in period was not created here as it was with respect to sales under Cabot's Rate Schedule No. 54. It is therefore appropriate to accept for filing the proposed increased rate contained in Supplement No. 7 to Cabot's Rate Schedule No. 60 to be effective as of October 1, 1965, subject to refund in Docket No. RI62-450.

Consistant with the foregoing, we are also accepting the notices of change involved here as compliance filings with respect to the initial rates authorized in Opinion No. 464 to be effective on June 10, 1965.

Cabot's proposed rates exceed the applicable price level for increased rates in the Panhandle Area as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Pt. 2, § 2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown for accepting for filing the 19.142 cents per Mcf rate, contained in Supplement No. 7 to Cabot's FPC Gas Rate Schedule No. 60, and for permitting it to become effective as of October 1, 1965, the date of expiration of the statutory notice; subject to refund under Cabot's agreement and undertaking filed in Docket No. RI62-450.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 12 to Cabot's FPC Gas Rate Schedule No. 54, and that such supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The 19.142 cents per Mcf rate contained in Supplement No. 7 to Cabot's FPC Gas Rate Schedule No. 60 is accepted for filing and permitted to become effective as of October 1, 1965, subject to refund in Docket No. RI62-450.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 12 to Cabot's FPC Gas rate Schedule No. 54.

(C) Pending a hearing and decision thereon, Supplement No. 12 to Cabot's FPC Gas Rate Schedule No. 54 is hereby suspended and the use thereof deferred until October 2, 1965, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act: *Provided, however,* Supplement No. 12 to Cabot's FPC Gas Rate Schedule No. 54 shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Cabot shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless Cabot is advised to the contrary within 15 days from the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Supplement Nos. 12 and 7 to Cabot's FPC Gas Rate Schedule Nos. 54 and 60, respectively, are also accepted for filing as compliance filings with respect to the initial rate authorized in Opinion No. 464 to be effective as of June 10, 1965.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before November 15, 1965.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

[F.R. Doc. 65-10729; Filed, Oct. 7, 1965; 8:46 a.m.]

[Docket Nos. CP65-402, CP66-13]

HAMILTON, OHIO, TEXAS GAS TRANSMISSION CORP.

Order Consolidating Proceedings, Permitting Intervention, Prescribing Procedures and Fixing Date of Prehearing Conference

SEPTEMBER 30, 1965.

Each of the above proceedings concerns an application filed under section 7 of the Natural Gas Act. Notice of the filing of each application has been issued.[1] Petitions to intervene and requests for formal hearing were timely filed in each docket by the city of Cincinnati (Cincinnati), Kentucky Gas Transmission Corp. and the Ohio Fuel Gas Co., joint petition (Columbia) and the Cincinnati Gas & Electric Co. (Cincinnati Gas). The Public Utilities Commission of Ohio (PUC) filed a notice of intervention in each docket. On July 23, 1965, Hamilton petitioned for leave to intervene in Docket No. CP66-13, moved for consolidation with Docket No. CP65-402 and requested expedited hearing. On August 2, 1965, Cincinnati Gas and Columbia each filed answers and objections to the motion for expedited hearing.

In Docket No. CP65-402 Hamilton under section 7(a) requests that the Commission issue an order directing Texas Gas to construct a meter station and to establish physical connection between its main line facilities and those to be constructed by Hamilton, and to sell up to 37,550 Mcf per day to Hamilton. In Docket No. CP66-13 Texas Gas filed under section 7(c) requesting authorization to construct and operate the necessary facilities to render the proposed service to Hamilton: Approximately 22.31 miles of 30-inch loop pipeline in Tennessee and Kentucky; approximately 22.43 miles of 36-inch loop pipeline in Louisiana; one 9,100 horsepower centrifugal compressor unit in the Lake Cormorant, Miss., Compressor Station, and one meter station in the city of Hamilton. Texas Gas estimates the cost of the facilities proposed to be $8,257,000 which will be financed from cash on hand. These two applications are obviously related and should be heard on a consolidated record.

We are also of the view that the petitioners in each case have alleged sufficient interest in the Hamilton and Texas Gas applications to warrant intervention.

Based on our experience in other similar proceedings, it is our belief that we should set forth the procedure to insure an expeditious and orderly hearing.

[1] Table:

Docket No.	Notice issued	Federal Register citation	Publication date
CP65-402	6-22-65	30 F.R. 8352	6-30-65
CP66-13	7-21-65	30 F.R. 9418	7-28-65

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the matters in Docket Nos. CP65-402 and CP66-13 be consolidated for hearing and decision.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in these proceedings in order that the petitioners may establish the facts and the law form which the nature and validity of their alleged rights and interests may be determined and show what further action under the circumstances in the administration of the Natural Gas Act.

(3) The expeditious disposition of these proceedings will be effectuated by providing for service of testimony by the applicants and interveners prior to the holding of a prehearing conference.

The Commission orders:

(A) The above-captioned proceedings are hereby consolidated for the purpose of hearing and decision.

(B) The above-named petitioners are hereby permitted to intervene in these consolidated proceedings subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Applicants and any intervener in support of the applicants shall file with the Commission and serve on all parties and the Examiner on or before October 25, 1965, their direct presentations. Cincinnati, Cincinnati Gas, Columbia and any other intervener supporting them, shall also file with the Commission and serve on all parties and the Examiner on or before October 25, 1965, their direct presentations in support of the contentions set out in their petitions to intervene.

(D) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference shall be held before a hearing examiner of the Commission to be designated by the chief examiner, in order to consider the means by which the conduct of the consolidated proceedings may be facilitated and in order to determine further procedures including the date for commencement of cross-examination. Such conference will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., commencing at 10 a.m., e.s.t., on November 3, 1965.

By the Commission.

[SEAL] GORDON M. GRANT, *Acting Secretary.*

[F.R. Doc. 65-10730; Filed, Oct. 7, 1965; 8:46 a.m.]

[Docket No. RP66-4]

FLORIDA GAS TRANSMISSION CO.

Order Providing for Hearing, Suspending Proposed Revised Tariff Sheets To Become Effective Subject to Refund, and Granting Motion for Shortened Suspension Period

SEPTEMBER 30, 1965.

Florida Gas Transmission Co. (Florida Gas), on August 16, 1965, tendered for filing First Revised Sheets Nos. 27 and 63, to its FPC Gas Tariff, Original Volume No. 2, to become effective October 1, 1965, proposing an increase in its transportation rates and charges of approximately $1,732,000 annually over the rates currently in effect, based on data for the year ended May 31, 1965, as adjusted.

In support of the proposed increase, Florida Gas states that the changes relate solely to the transportation rates (Rate Schedules T-1 and T-2) and are necessitated to recover increased costs related to such services. Additionally, Florida Gas states that its present transportation rates were established as a result of a settlement in the rate proceeding in Docket Nos. RP61-3, et al., approved by Commission order issued June 8, 1962, and that the transportation rates established therein did not include, among other things, an allowance for Federal income taxes, Florida Gas states that the consolidated operating tax loss carry forwards of its parent and the subsidiary companies have been exhausted, and that the consolidated group is now in a tax-paying position. The amount of the proposed rate increase which is alleged to be caused by Federal income tax liability is $1,665,000, or 96 percent of the total proposed increase.

Florida Gas, on August 30, 1965, filed a motion herein, requesting that if its proposed increased rates were to be suspended, that the suspension period be shortened to 30 days rather than the 5-month statutory maximum. In support of its motion, Florida Gas states that its proposed increase in rates is applicable directly to only two of its ultimate users, Florida Power Corp. (Florida Power) and Florida Power & Light Co. Furthermore, Florida Gas states that, under the gas purchase contracts of those power companies, Sun Oil Co. (Sun), the producer of the gas in the field, will be required to absorb more than 80 percent of this rate increase. Thus, Florida Gas argues, the shortened suspension period would be a more reasonable balance of equities, in that Florida Gas will be permitted to collect its additional costs through the proposed increased rates, while the electric utility companies and Sun will be protected through the refund provision provided in the suspension order.

Sun filed an answer and objection, on September 10, 1965, to Florida Gas' motion for a shortened suspension period, wherein Sun contends that Florida Gas has not proved that it will have to pay any income taxes or that an allowance for such taxes is required. Florida

Power, in its petition to intervene herein filed on September 13, 1965, included a response to Florida Gas' motion for a shortened suspension period, wherein it stated that it will have to pay approximately $300,000 of the proposed increase requested by Florida Gas, that it will pass this additional cost along to its customers through its fuel adjustment clause, and that a shortened suspension period would complicate its problem of making refunds, if any, to its customers. Florida Power also alleges that Florida Gas has been accruing Federal income taxes on its books, even though such taxes were not, in fact, paid and the Commission found such accruals to be an improper accounting practice in Docket Nos. RP61–3, et al. Florida Power, however, acknowledges the fact that that issue has not been finally adjudicated and is now pending on appeal.

We believe that a shortened suspension period would be proper and Florida Gas' motion to that effect should be granted. If Florida Gas should sustain its burden of proving the lawfulness of its proposed rates, it will have been irreparably harmed for the period of suspension. If, on the other hand, Sun or Florida Power should be successful in controverting Florida Gas' allegation, Florida Gas' obligations as to refunds and interest provided herein will serve as sufficient protection for them. Admittedly a refund obligation is not complete protection to ultimate consumers with respect to the usual application for a rate increase (see FPC v. Tennessee Gas Transmission Co., 371 U.S. 145, 154–155), but thi scase is not the usual one. There are no ultimate consumers of gas involved in this proceeding, for whom a refund obligation would be "somewhat illusory." (371 U.S. 145, 154.) As heretofore noted, approximately 82 percent of the proposed increase will be borne by Sun. It will be the beneficiary to the same extent of any refunds that may result from this proceeding, and such refunds would not be "trickling down" to ultimate consumers. Further, Florida Power's contention that a shortened suspension would complicate the application of its fuel clause adjustment, and the relatively minor percentage of refunds it may receive, do not warrant suspension of the total increase proposed for the full 5-month statutory period.

In addition to the question of Florida Gas' income tax liability, there are other issues raised by the data submitted in justification of the proposed rate increase, including, but not limited to, allocation of costs, rate base, and depreciation.

The Commission finds:

(1) The rate increase contained in the revised tariff sheets tendered for filing by Florida Gas on August 16, 1965, has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications and services contained in Florida Gas' FPC Gas Tariff, and that proposed First Revised Sheets Nos. 27 and 63 to Original Volume No. 2 be suspended and the use thereof deferred as hereinafter provided.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the increase in transportation rates contained in Revised Sheets Nos. 27 and 63 to Florida Gas' FPC Gas Tariff, Original Volume No. 2, be made effective as hereinafter provided and that Florida Gas be required to file a motion and an undertaking as hereinafter ordered.

(4) The motion by Florida Gas for a shortened suspension period should be granted as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held on a date fixed by notice from the Presiding Examiner as hereinafter provided, concerning the lawfulness of the rates, charges, classifications and services contained in Florida Gas' FPC Gas Tariff, as proposed to be amended by First Revised Sheets Nos. 27 and 63 to Original Volume No. 2.

(B) Pending such hearing and decision thereon, Florida Gas' proposed revised tariff sheets, identified in Paragraph (A) above, are suspended and their use deferred until November 1, 1965; *Provided, however,* that, within 20 days from the date of this order, Florida Gas shall file a motion as required by section 4(e) of the Natural Gas Act and concurrently execute and file with the Secretary of the Commission the agreement and undertaking described in Paragraph (D) below. Unless Florida Gas is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(C) Florida Gas shall refund at such times and in such amount to persons entitled thereto, and in such manner as may be required by final order of the Commission, the portion of rates and charges found by the Commission in this proceeding not justified, together with interest thereon at the rate of 7 percent per annum from the date of payment to Florida Gas until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the tariff sheets made effective as of November 1, 1965, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report in writing (original and four copies) and under oath to the Commission monthly, for each billing period and for each customer, the amount charged to such customer for transportation of natural gas as computed under the tariff sheets in effect immediately prior to November 1, 1965, and under the tariff sheets allowed herein to become effective, together with the differences in the revenues so computed.

(D) As a condition of this order, Florida Gas shall execute and file in triplicate with the Secretary of this Commission, its written agreement and undertaking to comply with the terms of paragraph (C) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the Board of Directors, and accompanied by a certificate showing service of copies thereof upon all customers under the tariff sheets involved as follows:

Agreement and Undertaking of Florida Gas Transmission Co. to comply with the Terms and Conditions of Paragraph (C) of Federal Power Commission's order issued_____, 1965, In Docket No. RP66–4.

In conformity with the requirements of the order issued_____, 1965, in Docket No. RP66–4, Florida Gas Transmission Co. hereby agrees and undertakes to comply with the terms and conditions of Paragraph (C) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized by accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this _____ day of _____, 1965.

FLORIDA GAS TRANSMISSION CO.
By _____
(President)

Attest:

_____
(Secretary)

(E) If Florida Gas shall, in conformity with the terms and conditions of its agreement and undertaking, make the refunds as may be required by order of the Commission in this proceeding, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

(F) The dates for service of testimony by the Commission staff and interveners, the date for a prehearing conference and the designation of the Presiding Examiner will be specified by a future order of the Commission.

(G) The motion by Florida Gas for a shortened suspension period is granted to the extent provided in paragraph (B) above.

By the Commission. Commissioner Ross dissenting filed a separate statement appended hereto.[1]

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 65–10731; Filed, Oct. 7, 1965; 8:46 a.m.]

[Docket No. RI66–92]

SHELL OIL CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, Effective Subject to Refund

SEPTEMBER 30, 1965.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission

[1] Filed as part of original document.

jurisdiction, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR, Chapter I] and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by Respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondent shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless Respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before November 15, 1965.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

APPENDIX A

Shell Oil Co. (Shell) requests that its proposed rate increase be permitted to become effective as of October 1, 1965, the contractually provided effective date. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Shell's rate filing and such request is denied.

Shell proposes an increase of 0.5 cent per Mcf from a 21.05 cents "fractured" rate presently effective subject to refund in Docket No. RI65-475 and pertaining to gas produced from acreage dedicated to the basic contract; and an increase of 5.8 cents per Mcf from an initially certificated rate of 15.75 cents per Mcf and pertaining to gas produced from acreage dedicated by Supplement No. 7 to Shell's FPC Gas Rate Schedule No. 126. Shell was issued a permanent certificate in Docket No. G-8133 authorizing the sale from the additional acreage by Commission order issued July 19, 1965, at the 15.75 cents per Mcf rate, the rate under the rate schedule at the time of filing the added acreage supplement. The 15.75 cents per Mcf rate was a settlement rate approved by the Commission on August 1, 1962, in Shell's company-wide settlement, Docket Nos. G-9446, et al.

The gas sold by Shell to Gas Gathering Corp. (Gas Gathering) from the Happytown Field is resold by Gas Gathering to Transcontinental Gas Pipe Line Corp. pursuant to Gas Gathering's Rate Schedule No. 2 at a rate of 23.55 cents per Mcf representing Shell's rate to Gas Gathering plus a 2.5 cents per Mcf service charge incurred by Gas Gathering. Gas Gathering's rate of 23.55 cents per Mcf is presently being collected subject to refund in Docket No. RI65-647. Since the purchaser's related rate increase is in effect subject to refund, we believe that Shell's proposed rate increase should be suspended for 1 day from October 3, 1965, the date of expiration of the statutory notice, as hereinbefore ordered.

Shell's proposed increased rates and charges exceed the area price level of 14.0 cents per Mcf for increased rates in Southern Louisiana as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Pt. 2, Sec. 2.56).

[F.R. Doc. 65-10732; Filed, Oct. 7, 1965; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

SUGARCANE IN PUERTO RICO AND VIRGIN ISLANDS

Notice of Hearing on Fair Wages and Prices and Designation of Presiding Officers

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of section 301 of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U.S.C. 1131), and in accordance with the rules of practice and procedure applicable to wage and price proceedings (7 CFR 802.1 et seq.), notice is hereby given that public hearings will be held as follows:

At San Juan, P.R., in the Conference Room of the Agricultural Stabilization and Conservation Service Office, Segarra Building, on November 5, 1965, at 9:30 a.m.

At Christiansted, St. Croix, V.I., in the District Court Room, Government House, on November 8, 1965, at 9:30 a.m.

The purpose of these hearings is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1) pursuant to the provisions of section 301(c)(1) of the act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in the Virgin Islands during the calendar year 1966 on farms with respect to which applications for payment under the act are made, and (2) pursuant to the provisions of section 301(c)(2) of the act, fair and reasonable prices for the 1965-66 crop of Puerto Rican sugarcane and the 1966 crop of Virgin Islands sugarcane to be paid, under either purchase or toll agreements, by producers who process sugarcane grown by other producers and who apply for payments under the act.

To obtain the best possible information, the Department requests that all interested parties appear at the hearings to express their views and to present appropriate data with respect to the subject matter involved.

The hearings, after being called to order at the time and places mentioned herein, may be continued from day to day within the discretion of the presiding officers, and may be adjourned to a later day or a different place without notice other than the announcement thereof at the hearing by the presiding officers.

Tom O. Murphy, A. A. Greenwood, D. E. McGarry, C. F. Denny, and Carlos G. Troche are hereby designated as presiding officers to conduct jointly or severally the foregoing hearings.

Signed at Washington, D.C., on October 5, 1965.

H. D. GODFREY, *Administrator, Agricultural Stabilization and Conservation Service.*

[F.R. Doc. 65-10736; Filed, Oct. 7, 1965; 8:47 a.m.]

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI66-92	Shell Oil Co., 50 West 50th St., New York 20, N.Y.	126	8	Gas Gathering Corp. (Happytown Field, St. Martin Parish, La.) (South Louisiana).	$6,751 21	9-2-65	[2] 10-3-65	[3] 10-4-65	[7] [8] 21.05 [7] [9] 15.75	[4] [5] [6] [7] 21.55 [4] [5] [6] [7] 21.55	RI65-475.

[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] The suspension period is limited to 1 day.
[4] Periodic rate increase.
[5] Pressure base is 15.025 p.s.i.a.
[6] "Fractured" rate. Contractually due rate is 23.55 cents per Mcf.
[7] Includes applicable tax reimbursement.
[8] Pertains to acreage dedicated to basic contract.
[9] Pertains to acreage dedicated by Supplement No. 7 to Shell's Rate Schedule No. 126.

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